LOCAL GOVERNMENT ACT. 1888.

BY

ALEX. MACMORRAN.

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Local Government Act,

1888,

AND THE INCORPORATED PROVISIONS OF THE

MUNICIPAL CORPORATIONS ACT, 1882;

THE MUNICIPAL ELECTORS (CORRUPT PRACTICES) ACT, 1884,

AND THE BALLOT ACT, 1872;

WITH

INTRODUCTION, NOTES AND INDEX;

THE WHOLE FORMING

A COMPLETE EPITOME OF THE LAW RELATING TO THE CONSTITUTION AND ELECTION OF COUNTY COUNCILS, AND THEIR POWERS, DUTIES, AND LIABILITIES.

BY

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PREFACE.

WHEN the Local Government Bill was first introduced into Parliament, the Proprietors of the "*Justice of the Peace*" entrusted to the Author of this work the task of editing a series of Supplements to that Journal, which were to be devoted to the explanation and criticism of the details of the Bill. These Supplements were published from week to week until the Bill was finally passed. They met with considerable favour, and the Publishers have since desired the Author to prepare an Edition of the Act for the use of those who are interested in carrying it into effect.

The present Volume consists, first, of the Local Government Act; and, secondly, of the Incorporated Acts which relate to the Constitution, Election, and Business of the County Councils. The Act itself has been fully Annotated, and the Notes to the Incorporated Statutes have been prepared with equal care, so as to show in every case the modifications which have to be made in applying them to County Councils.

The numerous Statutes which are referred to in the Act, but which are not incorporated in the sense in which, for example, the Municipal Corporations Act, 1882, is incorporated, are not set out in detail, but the effect of them has been stated, and any changes consequent upon the

passing of the Act have been indicated. For example, the several Sections of the County Electors Act referred to in Section 76 of the Local Government Act are set out in full so far as that was necessary to explain the Amendments effected in them by the latter Act. The provisions of the Public Health Act, 1875, and of the Returning Officers (Expenses) Acts, are also fully set out in the Notes to the several Sections in which they are referred to.

The Index to the Statutes and Cases, and the general Index, are by Mr. W. Mackenzie, M.A., of the Northern Circuit.

A. M.

2, Elm Court, Temple,
September, 1888.

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(51 & 52 VICT. CAP. 41.)

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INTRODUCTION.

THE Local Government Act, 1888, is one of the most important measures of recent years. It has been said to be the most important statute relating to local government that has appeared since the Municipal Corporations Act, 1835, but it may be doubted whether that Act effected greater changes in local administration. Hitherto the business of a county, as distinguished from the smaller areas within the county, such as poor law unions or sanitary districts, has been administered by the justices in quarter sessions. It has been admitted on all sides that the justices have performed their allotted functions with economy and efficiency. But the justices were not a representative body, and when it came to be the general opinion that much of the work now done by Departments of State might with advantage be transferred to local bodies, an opportunity arose of creating representative boards or councils in counties, and transferring to them all, or nearly all, the administrative powers and duties now exercised by the quarter sessions, and at the same time of conferring upon them other powers and duties now exercised and performed by a central body, such as a Department of State. The object of the Act may therefore be said to be the creation of a representative body for the purposes of county government, and the transferring to that body, when elected, of all, or nearly all, the powers and duties now exercised and performed by the quarter sessions, and of some powers at present exer-

cised by justices out of session. In addition to these, it is proposed, by means of Provisional Orders, to transfer to the representative body many of the powers and duties which now devolve upon public departments and other public authorities.

The first point to which it is necessary to direct attention is the constitution of the county council, as the representative county body will be called. This council is to be constituted and elected in most respects similarly to the council of a municipal borough. It is to consist of a chairman, county aldermen, and county councillors. The mode of election is to be regulated by the Municipal Corporations Act, 1882, but with considerable modifications. County councillors will be elected once in three years. They will, moreover, be elected one for each electoral division, and these divisions are to be determined by the Local Government Board and by the quarter sessions in the following manner : In the first place, the Local Government Board must determine the number of councillors to be returned by each county. The same Board must then assign to each borough in the county, which has sufficient population to return one councillor, the number of councillors to be returned by that borough. Where such a borough has two or more councillors appointed to it, the borough council will divide the borough into electoral divisions. In the rest of the county the justices of quarter sessions will determine the electoral divisions. The Act contains elaborate directions for the constitution of these divisions. They are to be arranged with a view to the population of each being as nearly as may be equal, but

regard is to be had, not merely to population, but to a proper representation of the urban and rural population respectively, to the distribution and pursuits of the population, and to area. When the divisions have been determined, one councillor will be elected for each, the constituency of which division will be the register of county electors prepared in manner provided by the County Electors Act, 1888. In boroughs, the county electors' register and the burgess roll will be the same. The qualification of a councillor is that provided by the Municipal Corporations Act, 1882, as amended by the County Electors Act, 1888, with one or two additions. These are that a peer owning property in the county and an ownership voter are to be qualified as such to be elected councillors. The only disqualification of councillor created by the Act itself appears to be that provided by the Act in the case of a county coroner. The chairman of the county council, who corresponds to the mayor in a borough, will hold office like the mayor for a year, and he may be remunerated for his services. He is to be a justice of the peace for the county by virtue of his office, but apparently he will not, like the mayor of a borough, continue to be a justice after his term of office has expired. The vice-chairman of the council is to be elected by the council itself to hold office during the office of the chairman.

Certain special provisions are made for the purpose of applying the Municipal Corporations Act to the election of county councillors. The chief of these are the following: The returning officer at an election of county councillors is to be a person appointed by the council. He may appoint deputies

for the purposes of all or any elections in the county. In a borough, if the electoral division is wholly comprised within it, the returning officer will be the borough returning officer. The election will be in manner provided by the Ballot Act. The county aldermen will be elected at the first quarterly meeting next after the triennial election, that is to say, at the meeting held on the 7th November. The 7th November has been substituted for the 9th, that is, the day upon which, in boroughs, the mayor and aldermen are elected, as it was necessary to prevent the clashing of the two quarterly meetings. The costs of elections are to be regulated in the meantime by the scales provided for parliamentary elections ; but the county councils are enabled to frame a scheme or scale of expenses to be observed in future. The ordinary day for the election of councillors will be, as in boroughs, the 1st day of November, in every third year, but the first election which will take place under the Act is to be held in the month of January, 1889, and the returning officer for the purpose of that election is to be the sheriff of each county. The county councillors elected in January next will retire on the 1st November, 1891. Of the county aldermen first elected, one-half will retire on the 7th November, 1892, and the other half on the same day in the year 1894. After the first election of a county council they are not to be at once invested with their full powers and duties. They will act at first as a provisional council. They will meet for such purposes as the election of chairman and aldermen, and for making the necessary arrangements with quarter sessions for bringing the Act into operation. But it will not be until the 1st of April, 1889, that the county councillors will commence

to exercise their full powers and duties. These powers and duties are, for the most part, described by Part I. of the Act. The administrative business of quarter sessions is transferred to them, and a list of it will be found in section 3. Provisional Orders may be made transferring the powers of quarter sessions under local Acts, and for transferring the powers of Government Departments, and such public bodies as Commissioners of Sewers, or Conservators, to the county councils, and these Provisional Orders are to be made in manner provided by the Public Health Act, 1875, and will require the confirmation of Parliament. Certain powers of justices out of session relating to the licensing of theatres, and the execution of the Explosives Acts, 1875, are also transferred. Among other duties which are transferred to county councils, otherwise than from quarter sessions and justices, may be mentioned—the appointment of county coroner; an appointment which has hitherto been made by the freeholders of the county at large. One of the principal changes which will be effected by this Act will be the transferring of the control of the county police to a body consisting partly of justices and partly of members of the county council, referred to in the Act as the "standing joint committee." That committee will appoint the chief constable, and exercise the same control over the county police as has hitherto been exercised by the quarter sessions. The powers of justices as conservators of the peace are expressly preserved.

Another important change in the law effected by the Act is that which relates to main roads. Main roads have hitherto been kept in repair by the several highway autho-

rities throughout the country, and the county authorities have repaid to them one-half of the costs incurred in the maintenance of such roads. The cost of main roads is now for the future to fall wholly upon the county. The county councils are not merely to pay for them, but they are actually to repair them, except in urban districts, where urban authorities are permitted to claim to retain the duty of repairing main roads, and in that case they are entitled to receive the total cost from the county authority. The main roads are by the Act "vested" in the county council, a phrase the importance of which will be recognised by all who are acquainted with its use in the Public Health Act, 1875. Special provisions as to the main roads had of course to be made with reference to the boroughs, but these provisions will be noticed later in dealing with the application of the Act to boroughs. Special provision is also made for highways in the Isle of Wight and South Wales.

Another important power entrusted to the new county councils is that of enforcing the Rivers Pollution Act, 1876, in relation to so much of any stream as may pass through or by the county. It has been felt that this important statute has not been enforced to the extent it might have been. At present it should be enforced by sanitary authorities, but these authorities have often been the greatest offenders in matters of river pollution. Power is also given by Provisional Order to appoint joint committees to deal with an entire stream passing through several counties.

The county council have also power to oppose, though not to promote, Bills in Parliament, and to institute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their county. They are to have the same powers to make bye-laws as the council of a borough, and they are enabled to appoint medical officers for their county, who may, by arrangement with any district in the county, render their services as medical officers for such districts.

After the present year the grants which have hitherto been made by Parliament in aid of local rates are to cease. Instead of these, certain payments are to be made by the Commissioners of Inland Revenue, consisting of the proceeds of a number of licenses, specified in the first schedule of the Act, and of a proportion of the sums collected for Probate Duty. These sums are to be paid into the Bank of England into an account called "The Local Taxation Account," and they are to be distributed among the several counties in England in certain shares prescribed by the Act. These sums, when paid to the county councils, are to be carried by them to an account called "The Exchequer Contribution Account," and applied in substitution for the local grants heretofore made by Parliament. The Act contains very minute provision for the apportionment and distribution of these sums.

Up to this point counties have been spoken of as signifying counties in the ordinary sense, or, at least, in the sense of administrative counties. The administrative county is simply

a division of a county which exists as a separate county for the purposes of the Act. The administrative counties which are not entire counties are the divisions of Yorkshire, Lincolnshire, Suffolk, Sussex, Cambridge, Northampton, and the county of London. In addition to these, a large number of boroughs have been created county boroughs, and these require a word of explanation. As the Act was originally drawn, there were only eight of these county boroughs. This number has been now increased so as to include all boroughs having a population of over 50,000, together with some ancient cities and boroughs having a less population. One result of excluding these county boroughs from the administrative counties in which they are situated, has been to render it necessary to make an elaborate adjustment of the financial relations of these county boroughs and counties, seeing that, for the future, the county boroughs will be exempt from all contributions towards county purposes, with a few unimportant exceptions. For the purpose of making these adjustments Commissioners have been appointed, who are to act in default of agreement between the counties and the county boroughs. These county boroughs will be, to all intents and purposes, counties of themselves. The borough council will also be the county council, and that body will continue to act both as a municipal corporation and as a county council with all powers under the Act. The Act then provides for its application to the larger quarter sessions boroughs not being county boroughs, that is to say, those which have a population of 10,000 and upwards. In these boroughs the powers of the councils as local authorities under various statutes are expressly preserved. They are not to be liable to contribute

to county purposes to a greater extent than at present, but at all events, they are to form part of the county for the purpose of main roads, and they are declared to be urban authorities within the meaning of the Highway Act, 1878. When a borough has a separate commission of the peace, whether it has a separate quarter sessions or not, the powers of the quarter sessions or justices of the borough are to cease so far as relates to any business which, by the Act, is transferred to the county council or the county justices, and the county council is to have within such borough the same power as it has in the rest of the county. The only exception to this is, that the powers and duties of the quarter sessions and justices under the Acts relating to pauper lunatics are to be transferred to the borough council and not to the county council.

The Act makes important changes in the position of the smaller quarter sessions boroughs. In these boroughs the county council takes over the powers of the council of the borough justices as to pauper lunatics and all the powers and duties of the borough council as regards coroners, analysts, reformatories, industrial schools, fish conservancy, explosives, and under the Highways Act, 1878. For the purposes of all these Acts and all other administrative business of the county, these boroughs are to be included in the county. In boroughs with a population of less than 10,000, whether they have a separate quarter session or not, the powers and duties of the council as to analysts, contagious diseases of animals, gas meters, weights and measures, are to cease, and the borough is to form part of the county. But more important

than this is the provision that the separate police force of such a borough shall cease, and the existing force shall become part of the county police.

Passing from boroughs to the metropolis, we find there an important alteration in the law. The metropolis, as defined by the Act, is made a distinct administrative county. It is made a county for all purposes, except that the City of London is excepted from the jurisdiction of the quarter sessions and justices, unless they consent to pass under that jurisdiction. The number of county councillors is to be double the number of parliamentary representatives, and the electoral divisions are to be the parliamentary constituencies. The Metropolitan Board of Works is abolished, and the county council will succeed to their duties as well as to all powers and duties enjoyed by county councils in the rest of the country. Special provision is made for the creation of a commission of the peace and the grant of quarter sessions for the new county, also for the grant by the new county councils to the guardians of poor law unions similar to that which is made in counties under the earlier sections of the Act already referred to.

Special provisions are also contained in the Act for its application to several counties and liberties. All liberties are merged in the county, and this applies to the Cinque Ports, subject to the provisions of the Act as to quarter sessions boroughs.

One of the first duties of the new county councils will be to take into consideration the representations of the

Boundary Commissioners under the Act of last session. It will be their duty to consider such reports, and to make such representations to the Local Government Board as they think expedient for adjusting the boundaries of their county. Further alterations of the boundaries of counties, boroughs, or electoral divisions will be effected by means of orders of the Local Government Board on the representation of the county council. These orders will in some cases be provisional only. The county council will also take the initiative in the future alteration of county districts and parishes. They will effect the necessary alterations by means of orders, some of which will require to be confirmed by the Local Government Board. Power is given to the Local Government Board, with reference to unions in more than one county, to continue such unions for the purposes of indoor relief while dividing them for other purposes. In every alteration of boundaries, care is to be taken that as far as possible the boundaries of one area of local government shall not intersect the boundaries of another. Upon any alteration of boundaries there must be an adjustment of property, debts, and liabilities, and the Act contains elaborate provisions for the adjustment of these several matters.

The property, debts, and liabilities of the county are transferred to the county council, which is incorporated, and has power to acquire and hold lands without a license in mortmain. The funds of the council are to be carried to the county fund, out of which all payments are to be made; but in the accounts care is to be taken to distinguish between general county purposes, that is to say, purposes

for which the entire area of the county is liable to be assessed, and special county purposes, that is to say, purposes from contribution to which some portion or portions of the county may be for the time being exempt. Payments out of the county funds are to be made to and by the county treasurer; but before any payment can be made, a somewhat elaborate system has to be followed—the finance committee must first recommend the payment, then the council must resolve to make the payment at a meeting, then an order has to be made signed by three members of the finance committee present at the meeting, and countersigned by the clerk, and ultimately the cheques of the treasurer issued in pursuance of the order are to be countersigned by the clerk or his deputy. Orders for the payments of money may be removed into the High Court, and there wholly or partially disallowed. County councils are authorised to borrow for any purposes for which quarter sessions may at present borrow, and also for certain special purposes, namely, for consolidating the debts of the county, for purchasing lands or buildings for any work they are authorised to do, and which the Local Government Board consider should be defrayed out of the income of a number of years, and for making advances in aid of emigration. The power of making these last-mentioned advances, however, is only to be exercised if the council have a guarantee for repayment from a local authority in the county, or from the Government of a colony. In every case in which a county council borrow money, except where they borrow for the discharge of existing loans, they must obtain the consent of the Local Government

Board. Provision is made for the issue of county stock. The audit of the accounts of the county council is to be in like manner as the audit of the accounts of urban authorities, that is to say, by the district auditor. The audit of the accounts by the county auditors will cease.

Part V. of the Act, entitled "Supplemental," contains a large number of provisions relating to the application of Acts. The most important enactments of this Part are those which relate to the application of the Municipal Corporations Act, but these are so numerous that it would be impossible in the space at command to attempt to state them. One provision of some importance may, however, be mentioned. It is, that in London the persons whose names would in the ordinary course be placed in the separate non-resident list, and who would, therefore, be entitled to be elected as county councillors, are in London to be registered as county electors. Provision is contained in this Part for the proceedings of councils and committees and officers. The clerk of the peace is in general to be clerk to the council, and, subject to the provisions of the Act as to existing officers, the clerk of the peace and the deputy clerk are to be appointed by the standing joint committee. The last and concluding portion of the Act is entitled "Transitory Provisions," and after the Act comes into full operation it will be spent. This Part deals with first elections of county councillors, the preliminary action of councils acting as the provisional council, the appointed day, that is to say, the day upon which each portion of the Act will come into operation, and certain other transitory provisions, the most important of which relate to

the metropolis. Provision is made for existing officers, who are, for the most part, to hold office on the same terms and conditions as before the Act, save that they will, of course, be officers of the county council. In the event of their pecuniary position being affected either by abolition of office, diminution or loss of fees or salary, they will receive compensation to the extent to which they may suffer damage.

These are in outline the principal provisions of the Act, for the details of which reference must be made to its several sections.

LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

51 & 52 VICT. CAP. 41.

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.

[13th August, 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

COUNTY COUNCILS.

Constitution of County Council.

Establishment of county council.

1. A council shall be established in every administrative county as defined by this Act, and be entrusted with the management of the administrative and financial business of that county, and shall consist of the chairman, aldermen, and councillors.

This section contains in brief a statement of the effect of the Act. Its object is to create in every county a council elected by the persons registered as county electors. Such a council is to be elected in every administrative county as defined by section 100, for some counties are divided and have a council for each division (see section 46). To this council is to be transferred the whole of the administrative and financial business now exercised by courts of quarter sessions, together with some other powers and duties transferred to them by the Act itself or to be hereafter transferred to them by provisional order. It is proposed at some future day to transfer to the county councils many of the powers now exercised by departments of state, and this will be done by means of provisional orders. The council is to consist of a chairman, aldermen, and councillors, and its constitution is prescribed by the next section.

Composition and

2. (1) The council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like

Sect. 2. Sub-s. 1.

election of council and position of chairman.

manner, and be in the like position in all respects, as the council of a borough divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say :—

This provision is more fully carried out by section 75, *post*, which incorporates with this Act the provisions of the Municipal Corporations Act, 1882, as to the constitution and election of the council. These provisions are hereafter set out, and the modifications of them which are contained in this section and in section 75 and elsewhere throughout this Act have been carefully noticed under each section.

(2) As respects the aldermen or councillors—

(*a*) Clerks in holy orders and other ministers of religion shall not be disqualified for being elected and being aldermen or councillors ;

This provision prevents the application to county councillors of section 12, sub-section (1) (*b*), of the Municipal Corporations Act, 1882, *post*.

(*b*) A person shall be qualified to be an alderman or councillor who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county ;

45 & 46 Vict. c. 50.

The qualification of a councillor is that prescribed by section 11 of the Municipal Corporations Act, 1882, *post*. An alderman must by section 14 of the same Act be a councillor or a person qualified to be a councillor.

This provision qualifies two classes of persons to be aldermen or councillors besides those qualified under the Municipal Corporations Act as applied by this Act. These are (1) peers owning property (presumably real property notwithstanding the definition in section 100, *post*,) and (2) ownership voters.

(*c*) The aldermen shall be called county aldermen, and the councillors shall be called county councillors ; and a county alderman shall not, as such, vote in the election of a county alderman ;

This prevents the application to county aldermen of the Municipal Corporations, Act, 1882, section 60, *post*, which enables aldermen other than outgoing aldermen to vote as members of the council at the election of aldermen. As to the meaning of the words "as such," see the note to that section, *post*.

(*d*) The county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election ; and

In this respect the election of county councillors differs from that of borough councillors, of whom one-third go out of office in each year. See the Municipal Corporations Act, 1882, section 13, *post*.

(*e*) The divisions of the county for the purpose of the election of county councillors, shall be called electoral divisions

and not wards, and one county councillor only shall be elected for each electoral division:

When a borough is divided into wards, the number of councillors assigned to each ward must be three or a multiple of three, so as to admit of the retirement of one-third in each year. In a county one councillor only is to be returned for each electoral division.

(3) As respects the number of the county councillors, and the boundaries of the electoral divisions in every county—

(*a*) The number of the county councillors, and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine; and

The Local Government Board are to determine the number of the councillors for each county, and to apportion them between boroughs having sufficient population to return one or more members and the rest of the county. This has already been done.

(*b*) Any borough returning one councillor only shall be an electoral division; and

(*c*) In the rest of the county the electoral divisions shall be such as in the case of a borough returning more than one councillor the council of the borough, and in the rest of the county the quarter sessions for the county, may determine, subject in either case to the directions enacted by this Act; and in the case of elections after the first, to any alterations made, in accordance with the said directions, in manner in this Act mentioned:

Where the Local Government Board assign one councillor to a borough that borough is to be an electoral division; where they assign more than one, the council of the borough must divide the borough into electoral divisions. The rest of the county is to be divided by the quarter sessions. The directions for the constitution of electoral divisions are contained in section 51, *post*, and the future alteration of the boundaries of electoral divisions is provided for by section 54, *post*.

(4) As respects the electors of the county councillors—

The persons entitled to vote at their election shall be, in a borough, the burgesses enrolled in pursuance of the Municipal Corporations Act, 1882, and the Acts amending the same, and elsewhere the persons registered as county electors under the County Electors Act, 1888: 45 & 46 Vict. c. 50. 51 & 52 Vict. c. 10.

In a borough the electors will be the persons whose names are on the burgess roll; in a county the electors will be the persons whose names are on the roll of county electors. The persons who are qualified to be so enrolled are described in the notes to section 9 of the Municipal Corporations Act, 1882, *post*.

Sect. 2. Sub-s. 5.

(5) As respects the chairman of the county council—

(*a*) He shall be called chairman instead of mayor; and

As to the election of mayor, see the Municipal Corporations Act, 1882, section 61, *post*. The chairman will not have such precedence in the county as the mayor has in a borough, for section 15, sub-section (5), of the Municipal Corporations Act, 1882, is not to apply to him. See section 75, sub-section (16) (*b*), *post*.

(*b*) He shall, by virtue of his office, be a justice of the peace for the county; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate.

The oaths required by law to be taken by a justice other than the oath of qualification, are the oath of allegiance and the judicial oath. See 31 & 32 Vict. c. 72, s. 6; 34 & 35 Vict. c. 48. The chairman is to be selected from among the aldermen or councillors or persons qualified to be such, and it will be seen from the notes to section 9 of the Municipal Corporations Act, 1882, *post*, that a person may be qualified to be a councillor without possessing any property qualification.

(6) The county council may from time to time appoint a member of the council to be vice-chairman, to hold office during the term of office of the chairman, and, subject to any rules made from time to time by the county council, anything authorised or required to be done by, to, or before the chairman may be done by, to, or before such vice-chairman.

The term of office of the chairman is one year. See section 15 of the Municipal Corporations Act, 1882, *post*.

This provision presumably supersedes section 16 of the Municipal Corporations Act, 1882, which enables the mayor to appoint a deputy.

Powers of County Council.

Transfer to county council of administrative business of quarter sessions.

3. There shall be transferred to the council of each county on and after the appointed day, the administrative business of the justices of the county in quarter sessions assembled, that is to say, all business done by the quarter sessions or any committee appointed by the quarter sessions, in respect of the several matters following, namely,—

The appointed day is defined by section 109, *post*.

(i.) The making, assessing, and levying of county, police, hundred, and all rates, and the application and expenditure thereof, and the making of orders for the payment of sums payable out of any such rate or out of the county stock or county fund, and the preparation and revision of the basis or standard for the county rate;

Sect. 3. Note Sub-s. 1.

County rates are made, assessed, and levied in manner provided by 15 & 16 Vict. c. 81. It will be the duty of the county council to appoint a committee to prepare and from time to time revise the standard or basis for the county rate. The county council will also make the county rate upon all parishes and places liable to contribute to it, and the same Act provides how it is to be levied.

The hundred rate used to be levied for the purpose of making good compensation for damage by riot pursuant to 7 & 8 Geo. 4, c. 31, and 2 & 3 Will. 4, c. 72. These Acts are now repealed, and such compensation is payable out of the police rate of the district in which the damage was done. See the Riot (Damages) Act, 1886, *infra*. The police rate is made under 2 & 3 Vict. c. 93, and levied in manner provided by 7 & 8 Vict. c. 33.

A hundred rate may also be levied for the purposes of certain main roads and bridges under section 20 of the Highway Act, 1878.

The application and expenditure of these rates will devolve upon the county council. As to the making of orders for the payment of sums out of the county fund (to which all receipts of the county council are to be carried), see section 68, which also contains provisions for the raising of county contributions.

(ii.) The borrowing of money;

The borrowing of money by the county council is regulated by section 69, *post*. In the notes to that section will be found a list of the principal purposes for which money may be borrowed.

(iii.) The passing of the accounts of and the discharge of the county treasurer;

The duty of the county treasurer to account for sums received and paid by him is regulated by 12 Geo. 2, c. 29, and 15 & 16 Vict. c. 81, s. 50. By the first of these Acts the treasurer must deliver accounts upon oath with vouchers, and when these have been passed by the county council they must be deposited with the clerk of the council and by him kept among the records of the county. The Act also provides for the discharge of the treasurer.

(iv.) Shire halls, county halls, assize courts, judges' lodgings, lock-up houses, court houses, justices' rooms, police stations, and county buildings, works, and property, subject as to the use of buildings by the quarter sessions and the justices to the provisions of this Act respecting the joint committee of quarter sessions and the county council;

A shire hall, county hall, or other building, lodgings for Her Majesty's judges, may be purchased, built, or repaired under 7 Geo. 4, c. 63. The provisions of that Act are extended by 7 Will. 4, and 1 Vict. c. 24, to the building, altering, and repairing of any shire hall or county hall, or any building used partially as a town hall, in cases where assizes and sessions have been held in a town hall not belonging exclusively to the county. The same Act enables shire halls, &c., to be purchased when the assize town is changed, or to be hired. These Acts are amended by 10 & 11 Vict. c. 28, and by 40 & 41 Vict. c. 21, s. 49. The provisions of 7 Geo. 4, c. 63, are also extended by 2 & 3 Vict. c. 69, in respect of the purchase, &c., of judges' lodgings.

Lock-up houses are provided for counties under 5 & 6 Vict. c. 109, s. 22, and for two or more counties or boroughs jointly under 11 & 12 Vict. c. 101, and 31 & 32 Vict. c. 22, s. 10. The Act last referred to enables counties and

Sect. 3. Note Sub-s. 4.

boroughs to contract for the reception in lock-up houses of persons belonging to another jurisdiction. Under 28 & 29 Vict. c. 126, s. 71, certain discontinued prisons may be used as lock-up houses.

Petty sessional court-houses are provided in counties and boroughs under 12 & 13 Vict. c. 18, 31 & 32 Vict. c. 22, 42 & 43 Vict. c. 49, s. 30, 47 & 48 Vict. c. 43, s. 8.

Police stations are provided under 3 & 4 Vict. c. 88, and if unnecessary, may be disposed of under 19 & 20 Vict. c. 69, s. 24.

As to the use of county buildings by sessions and justices, see section 30, *post*, which relates to the powers of the standing joint committee.

42 & 43 Vict. c. 18.

(v.) The licensing under any general Act of houses and other places for music or for dancing, and the granting of licenses under the Racecourses Licensing Act, 1879;

There is only one general Act relating to music and dancing licences, and that is local in its operation. The Act in question is the 25th Geo. 2, c. 36, s. 2, which provides that any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, kept in the cities of London and Westminster, or within 20 miles thereof, without a license had for that purpose from the county council, who are hereby authorised and empowered to grant such license as they in their discretion shall think proper, shall be deemed a disorderly house or place.

The Racecourses Licensing Act (1879), 42 & 43 Vict. c. 18, provides that it shall not be lawful that any horse race to be held or take place within a radius of 10 miles from Charing Cross, unless within a place for which a license for horse racing has been obtained. The power and duty of granting licenses under this Act will now devolve on the county councils in the metropolitan area.

(vi.) The provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics;

Lunatic asylums are provided for counties and boroughs under 16 & 17 Vict. c. 97, and a large number of subsequent statutes for which the reader is referred to *Archbold's Law of Lunacy*. Visiting committees are appointed under 16 & 17 Vict. c. 97, ss. 21-28, 44, 130, and 18 & 19 Vict. c. 105, s. 15.

It should be observed that the text deals only with pauper lunatics. The Act does not affect the powers of justices as visitors of private lunatic asylums under 8 & 9 Vict. c. 100.

(vii.) The establishment and maintenance of and the contribution to reformatory and industrial schools;

The Acts relating to reformatories and industrial schools, so far as here material, are the 29 & 30 Vict. cc. 117, 118. Under these Acts a prison authority may contract with the managers of a certified reformatory school, or of an industrial school, for the reception and maintenance therein of offenders whose detention is ordered by quarter sessions or justices. Such an authority may contribute towards the alteration, enlargement, or rebuilding of such a school, or towards the support of the inmates, or towards its management, or towards its building, &c., with the approval of a Secretary of State. By 35 & 36 Vict. c. 21, a prison authority are empowered themselves to undertake anything towards which they may contribute under the Act first mentioned. The county council will now have the powers of a prison authority. It should be stated that Bills are now before Parliament for the consolidation and amendment of the Acts relating to reformatory and industrial schools.

(viii.) Bridges and roads repairable with bridges, and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority; Sect. 3. Sub-S. 8. 41 & 42 Vict. c. 77.

By the Statute of Bridges, 22 Hen. 8, c. 5, it was provided that all public bridges, with the highway for a distance of 300 feet from each end of the bridge, should be repaired by the quarter sessions. This applied to every public bridge in the county, the power and duties of the justices being regulated by the Act already mentioned, and by 1 Anne, stat. 1, c. 18, and 12 Geo. 2, c. 29. Power to widen, improve, and alter the situation of county bridges is given by 14 Geo. 2, c. 33, 43 Geo. 3, c. 59, 52 Geo. 3, c. 110, 54 Geo. 3, c. 90, 55 Geo. 3, c. 143, 5 & 6 Will. 4, c. 50, ss. 21, 22, 4 & 5 Vict. c. 49, &c. By the 43 Geo. 3, c. 59, it is provided that no bridge thereafter to be erected by any private person or body corporate should be deemed to be a county bridge repairable by the county unless it were erected under the direction or to the satisfaction of the county surveyor. By 5 & 6 Wm. 4, c. 50, s. 21, if any bridge be built after 1836, which is or shall be repairable by the county, all highways leading to, passing over and next adjoining to such bridge, are to be repaired by the parish, &c., previously bound to repair them. By 33 & 34 Vict. c. 73, s. 12, where a turnpike road shall have become an ordinary highway, all bridges previously repaired by the turnpike trustees are to become county bridges, and kept in repair accordingly; but such bridges are to be deemed to have been erected subsequently to the 5 & 6 Will. 4, c. 50. By the 41 & 42 Vict. c. 77, s. 21, any bridge erected before 1878, in any county, without such superintendence as is required by 43 Geo. 3, c. 59, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority think fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair. By section 22 of the same Act the county authority may make such contributions towards the cost of any bridge to be thereafter erected, after the same has been certified in accordance with the provisions of 43 Geo. 3, c. 59, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one-half the cost of erecting such bridge. By 43 & 44 Vict. c. 5, the county authority may borrow on mortgage of the county rate for the purpose of contributing towards the cost of a bridge, under section 22 of the 41 & 42 Vict. c. 77. By 44 & 45 Vict. c. 14, county authorities in South Wales were enabled to take over and contribute towards certain bridges. These are the principal enactments relating to county bridges, and they will henceforth be administered by the county council. By section 6 of this Act, *post*, the county council have power to purchase or take over existing bridges, not being at present county bridges, and to erect new bridges.

The 41 & 42 Vict. c. 77, confers the following powers upon a county authority, and these powers are now transferred to the county council:—Investing rural sanitary authorities with powers of highway boards in certain cases, sections 3, 5; approving the division of districts for the purpose of charging each with the cost of its own highways, section 7; enforcing performance of duty by defaulting highway authority, section 10; declaring highway to be a main road, section 15; reducing main road to status of ordinary highway, section 16; directing form of accounts for maintenance of main roads, section 18; power to declare main roads repairable by the hundred in certain cases, section 20; accepting bridges as county bridges, section 21; contributing towards the cost of erecting county bridges, section 22; reviving liability to repair highways discontinued as unnecessary, section 24; making bye-laws, section 26; authorising use of locomotives of certain sizes and weights, section 28; making bye-laws as to hours for use of locomotives, section 31; licensing locomotives, section 32.

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(ix.) The tables of fees to be taken by and the costs to be allowed to any inspector, analyst, or person holding any office in the county other than the clerk of the peace and the clerks of the justices;

By the Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, s. 47, inspectors of Weights and Measures are to take the fees fixed by the county authority, not exceeding the fees mentioned in the schedule to that Act, and to account for them to the county authority. That authority will in future be the county council (see *infra*). The analyst is appointed under the Sale of Food and Drugs Act, 1875, 38 & 39 Vict. c. 63, s. 10, but the Act is silent as to any table of fees or costs, as the cost of analysis of any article of food or drug is fixed by section 12. It is doubtful whether a parish constable is an officer holding office in the county, but it is submitted that he is, and that the county council must fix the fees and allowances payable to such constables under 5 & 6 Vict. c. 109, s. 17; 13 & 14 Vict. c. 20, s. 2; 35 & 36 Vict. c. 92, s. 11. For the fees payable to inspectors of gas meters, see 22 & 23 Vict. c. 66, s. 4.

38 & 39 Vict. c. 17.

(x.) The appointment, removal, and determination of salaries, of the county treasurer, the county surveyor, the public analysts, any officer under the Explosives Act, 1875, and any officers whose remuneration is paid out of the county rate other than the clerk of the peace and the clerks of the justices;

The county treasurer is appointed pursuant to 12 Geo. 2, c. 29, s. 6. He must give security under that Act to be accountable for the moneys paid to him. He is removable at pleasure (*ib.* s. 11). His remuneration is in the discretion of the council. 55 Geo. 3, c. 51, s. 17.

The county surveyor is referred to in many statutes, such as those relating to bridges and highways, but his appointment, &c., is not regulated by statute.

The public analysts are appointed under 38 & 39 Vict. c. 63, s. 10, at such rates of remuneration as may be agreed upon. See section 39, *post*, as to analysts in the smaller boroughs.

The county council will in future be the local authority for the administration of the Explosives Act, 1875, 38 & 39 Vict. c. 17 (see section 7, *post*), and it will be necessary for them to appoint officers under that Act.

The other officers referred to in the section include clerks and servants necessarily employed with reference to county business and in county offices.

(xi.) The salary of any coroner whose salary is payable out of the county rate, the fees, allowances, and disbursements allowed to be paid by any such coroner, and the division of the county into coroners' districts, and the assignment of such districts;

All county coroners are paid out of the county rate. 23 & 24 Vict. c. 116, s. 4, provides for the payment of the coroner's salary, and its revision from time to time, having regard to the number of inquests held. By the Coroners Act, 1887, 50 & 51 Vict. c. 71, s. 25, as applied by this Act, the county council may from time to time make, vary, and alter a schedule of fees, allowances, and disbursements, which, on the holding of an inquest, may lawfully be paid and made by the coroner holding such inquest (other than the fees payable to medical witnesses in pursuance of that Act). By section 27 of the same Act

every coroner is required within four months after holding an inquest to lay their accounts of all sums paid by them before the county council. Sect. 3. NOTE SUB-S. 11.

Districts are assigned to coroners under 7 & 8 Vict. c. 92, s. 5, as amended by this Act. See sections 5, 38, 39, 114.

The provisions in the text do not apply to county boroughs. See section 34, *post*.

(xii.) The division of the county into polling districts for the purposes of parliamentary elections, the appointment of places of election, the places of holding courts for the revision of the lists of voters, and the costs of and other matters to be done for the registration of parliamentary voters;

It will be the duty of a county council, under 30 & 31 Vict. c. 102, s. 34, to divide their county into polling districts, and assign to each district a polling place in such manner, as far as practicable, to enable each voter to have a polling place within a convenient distance of his residence . . . and to name the polling places at which the revising barristers are to hold their courts. This power may be exercised from time to time as may be found necessary, 31 & 32 Vict. c. 58, s. 18. See also 35 & 36 Vict. c. 33, s. 5; 46 & 47 Vict. c. 51, s. 47; 48 & 49 Vict. c. 15, s. 13. And see as to county boroughs, section 34 (6), *post*.

As to the expenses and remuneration of clerks of the peace, town clerks, returning officers, overseers, relieving officers, &c., in connection with the registration of voters, see 6 & 7 Vict. c. 18, ss. 54, 55, 57; 30 & 31 Vict. c. 102, s. 31; 31 & 32 Vict. c. 58, ss. 23, 31, 32; 41 & 42 Vict. c. 26, s. 30; 48 & 49 Vict. c. 15, ss. 8, 14; 51 Vict. c. 10, ss. 8, 9, 11.

It is impossible in the space at disposal in a work of this kind to do more than enumerate the statutory provisions, for full details respecting which the reader is referred to Messrs. Mackenzie and Lushington's recent work on the Registration of Voters.

(xiii.) The execution as local authority of the Acts relating to contagious diseases of animals, to destructive insects, to fish conservancy, to wild birds, to weights and measures, and to gas meters, and of the Local Stamp Act, 1869; 32 & 33 Vict. c. 49.

The Contagious Diseases (Animals) Acts are 41 & 42 Vict. c. 74; 47 & 48 Vict. c. 13; 47 & 48 Vict. c. 47; 49 & 50 Vict. c. 32. It is provided by section 39, *post*, that nothing in that section shall transfer to the county council any powers, duties, or liabilities under section 34 of the 41 & 42 Vict. c. 74, as amended by section 9 of the 49 & 50 Vict. c. 32. This provision is explained in the note to section 39, *post*. Certain transitory provisions as to the Contagious Diseases (Animals) Acts are contained in section 112, *post*.

The Destructive Insects Act is the 40 & 41 Vict. c. 68. Under it the county council as local authority might be ordered by the Privy Council to make compensation for any crops removed or destroyed for the purpose of preventing the spreading of destructive insects.

Conservators of rivers will in future be appointed by the county council under 24 & 25 Vict. c. 109, s. 33; 28 & 29 Vict. c. 121, ss. 4 to 19; 36 & 37 Vict. c. 71, ss. 9, 10, 26 to 33; 41 & 42 Vict. c. 39, s. 6; 47 & 48 Vict. c. 11 s. 2.

By the Wild Birds Protection Act, 1880, 43 & 44 Vict. c. 35, s. 8, a Secretary of State may upon application by the (county council) extend or vary the

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time during which the killing and taking of wild birds or any of them is prohibited by that Act. The Act is amended by 44 & 45 Vict. c. 51, but that Act does not confer any additional power on the county council.

Under the Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, s. 40, it will be the duty of the county council, as local authority, to provide local standards of weights and measures, and fix the places at which the standards are to be deposited. They must also provide proper means for verifying weights and measures by comparison with the local standards, and for stamping the weights and measures so verified. The expenses of executing the Act are payable out of the county rate. Two or more county councils may combine as regards either the whole or any part of the areas within their jurisdiction for all or any of the purposes of the Act upon such terms and in such manner as may be from time to time mutually agreed upon. The county council may under section 53 make bye-laws as to the local verification of weights and measures. The county council will also appoint an inspector under section 43 and fix the times and places at which he is to attend; and they are under section 47 to fix the fees he is to take (see ix. *supra*). By section 39, *post*, in the boroughs having a population of less than 10,000, such boroughs are for the purposes of the Weights and Measures Acts to form part of the county.

The Acts relating to gas meters are 22 & 23 Vict. c. 66, and 23 & 24 Vict. c. 146. By these Acts models of gas holders measuring the cubic foot are to be deposited with the (county council) at such places as they shall direct. The council are also to appoint inspectors. The expenses are to be paid out of the county rates. By section 39, *post*, smaller boroughs are to form part of the county for the purposes of these Acts.

The Local Stamp Act is the 32 & 33 Vict. c. 49. It provides that when all the clerks of petty and special sessions and justices within a county are paid by salary, the (county council) may order that all fees and penalties payable to the treasurer be paid and received by stamps. The expenses of the Act are to be defrayed out of the county rate.

49 & 50 Vict. c. 38.

(xiv.) Any matters arising under the Riot (Damages) Act, 1886;

The county council will succeed to the powers and duties of the quarter sessions under the Riot (Damages) Act, 1886, 49 & 50 Vict. c. 38. Compensation payable under that Act to any person whose property has been injured, stolen, or destroyed by rioters will be paid by the council out of the police rate.

(xv.) The registration of rules of scientific societies under the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter thirty-six; the registration of charitable gifts under the Act of the session of the fifty-second year of the reign of George the Third, chapter one hundred and two; the certifying and recording of places of religious worship under the Act of the session of the fifty-second year of the reign of George the Third, chapter one hundred and fifty-five; the confirmation and record of the rules of loan societies under the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and ten; and

The 6 & 7 Vict. c. 36 is the Act under which scientific and literary societies are entitled to exemption from payment of rates. In order to entitle any

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society to exemption under the Act a copy of its rules must be submitted to the barrister appointed to certify the rules of friendly societies, who inquires and certifies whether the society is within the Act. His certificate, given upon the copy of the rules, is afterwards affirmed and allowed by the (county council) and filed by the clerk of the (council).

The 52 Geo. 3, c. 102, provides that a memorial or statement of the real and personal estate, and of the income, investment, and objects of all charities and charitable donations for the benefit of the poor or other persons in England and Wales, together with the names of the founders, the names of the persons possessing the deeds, wills, or other instruments by which the charities were founded, and the names of the trustees, shall within 12 months after execution of such deeds, wills, &c., be registered in the office of the clerk of the (council).

The 52 Geo. 3, c. 155, s. 1, provides that no congregation or assembly for religious worship of Protestants (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, assembly, or congregation shall be held) shall be permitted or allowed, if the same shall not have been duly certified to the bishop of the diocese, or to the archdeacon, or to the (county council). It should be observed, however, that these places may now be registered and recorded by the Registrar-General, and in these cases they need not be registered under the 52 Geo. 3, c. 155 (see 18 & 19 Vict. c. 81).

By the 3 & 4 Vict. c. 110, s. 4, it is provided that copies of the rules of every loan society are to be submitted to the barrister appointed to certify the rules of savings banks, who is to certify whether such rules are calculated to carry into effect the intention of the parties framing the same and in conformity with law, and a transcript as certified is to be sent to the clerk of the peace and allowed and confirmed by the (county council).

(xvi.) Any other business transferred by this Act.

See Part II., *post*.

For the general provisions as to powers transferred to county councils, see ss. 28, 29, *post*.

Transfer of certain powers under local Acts.

4. Where it appears to the Local Government Board that any powers, duties, or liabilities of any quarter sessions or justices, or any committee thereof, under any local Act are similar in character to the powers, duties, and liabilities transferred to county councils by this Act, or relate to property transferred to a county council by this Act, the Board may, if they think fit, make a Provisional Order for transferring such powers, duties and liabilities to the county council.

This section provides for the transfer to county council of powers, duties, and liabilities similar to those transferred by the last section where these depend on local Acts, or which relate to property transferred to a county council by this Act. A transfer under this section is to be effected by Provisional Order of the Local Government Board. As to the making of a Provisional Order, see section 87, *post*.

Appointment of coroners by county council.

5. (1) After the appointed day a coroner for a county shall not be elected by the freeholders of the county, and on any vacancy occurring in the office of a coroner for a county, who is elected to

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that office in pursuance of a writ *de coronatore eligendo*, a like writ for the election of a successor shall be directed to the county council of the county instead of to the sheriff, and the county council shall thereupon appoint a fit person, not being a county alderman or county councillor, to fill such office, and in the case of a county divided into coroners' districts shall assign him a district; and any person so appointed shall have like powers and duties, and be entitled to like remuneration, as if he had been elected coroner for the county by the freeholders thereof.

For the meaning of the phrase "appointed day," see section 109, *post*.

Hitherto the county coroner has been elected by the freeholders of the county. A writ *de coronatore eligendo* was issued to the sheriff, who thereupon held an election. See the sections of the Coroners Act, 1887, 50 & 51 Vict. c. 71, repealed by sub-section (6), *infra*. The writ will now be directed to the county council.

This creates a disqualification for being a councillor in addition to those enumerated in the notes to the Municipal Corporations Act, 1882, section 12, *post*.

The duty of assigning coroners' districts devolves upon the county councils under section 3 (xi.), *ante*. See further as to coroners' districts sub-section (3), *infra*, and section 114 as to coroners' districts situate in the county of London. The area of a borough with a population under 10,000 is to be subject to the authority of the county coroner, and may be annexed by the county council to a coroner's district of the county. See section 38, *post*.

(2) Where the district of any such coroner is situate wholly within any administrative county, the council of that county shall, subject as hereinafter mentioned, appoint the coroner.

For the definition of "administrative county," see section 100, *post*.

The case of a district extending into two administrative counties is provided for by the next sub-section.

(3) Where the district of any such coroner is situate partly in one and partly in another administrative county forming part of an entire county, the joint committee for the entire county may arrange for the alteration in manner provided by law of the district, so that, on the next avoidance of the office of coroner of that district, or at any earlier time fixed by the joint committee when the alteration is made, the coroner's district shall not be situate in more than one administrative county.

The joint committee here referred to is the committee of the two county councils appointed under section 46, *post*.

The manner provided by law is by petition to Her Majesty praying that an alteration be made in the division of the county into coroners' districts. Notice of the petition is given to the coroners of the county. If the divisions are altered to the prejudice of any of the coroners, compensation must be paid to him. 7 & 8 Vict. c. 92. The alteration may take effect on the next avoidance of the office of coroner of the district, or at an earlier period fixed by the council.

(4) Until such arrangement is made, the joint committee for the entire county shall appoint the coroner for the said district, and the amount payable in respect of the salary, fees, and expenses of such coroner shall be defrayed in like manner as costs of the joint committee are directed by this Act to be defrayed. Sect. 5. Sub-s. 4.

As to the joint committee and their expenses, see section 46, *post*. As to the salary, fees, and expenses of the coroner, see the note to section 3 (xi.), *ante*.

(5) Nothing in this Act respecting the appointment of a coroner shall alter the jurisdiction of a coroner for the entire county, or any power of removing such coroner, whether by writ *de coronatore exonerando* or otherwise, and all writs for the election or removal of a coroner shall be altered so as to give effect to this section.

Though a coroner has a district assigned to him, he is nevertheless coroner for the entire county. See 7 & 8 Vict. c. 92, s. 19.

A coroner is chosen for life, but he may be removed either by being made sheriff or chosen verderer, which are offices incompatible with that of coroner, or by the writ *de coronatore exonerando* for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. Fitz. N. B. 163, 184; 2 Inst. 132. By the Coroners Act, 1887, 50 & 51 Vict. c. 71, s. 8, the Lord Chancellor may remove any coroner for inability or misbehaviour in the discharge of his duty. By the same section a coroner who is guilty of extortion, or of corruption, or of wilful neglect of his duty, or of misbehaviour in the discharge of his duty, shall be guilty of a misdemeanor, and, in addition to any other punishment, may, unless his office of coroner is annexed to any other office, be adjudged by the court before whom he is so convicted to be removed from his office. By section 10 a coroner shall not by himself or his partner, directly or indirectly, act as solicitor in the prosecution or defence of a person for an offence for which such person is charged by an inquisition taken before him as coroner, whether such person is tried on that inquisition or on any bill of indictment found by a grand jury. If a coroner acts in contravention of this section he shall be deemed guilty of misbehaviour in the discharge of his duty.

(6) Sections eleven and fourteen and the First Schedule of the Coroners Act, 1887, and any other enactment relating to the election of a coroner for a county by the freeholders of such county or any district thereof, are hereby repealed as from the appointed day, without prejudice to anything done or suffered, or any legal proceeding commenced or penalty incurred before such repeal takes effect. 50 & 51 Vict. c. 71.

For the meaning of the phrase "appointed day," see section 109, *post*.

The repealed sections of the Coroners Act, 1887, are those which regulate the election of a coroner by the freeholders.

(7) A person who holds the office of coroner shall not be qualified to be elected as a county alderman or county councillor for the county for which he is a coroner.

Sect. 5. NOTE SUB-S. 7. By sub-section (1) a person who is an alderman or councillor may not be elected coroner for the county. This sub-section provides that a county coroner shall not be qualified to be elected an alderman or councillor.

Power of council as to bridges.

6. The county council shall have power to purchase, or take over on terms to be agreed on, existing bridges not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected.

In the note to section 3 (viii.) the public bridges which are not county bridges have been mentioned. These will for the most part be bridges which have been built since the passing of the 43 Geo. 3, c. 59, s. 5, and without such superintendence as is provided by that section, and which have not been taken over by the county under 41 & 42 Vict. c. 77, s. 21. Such bridges may now be taken over on such terms as may be agreed upon, though it is not quite clear who are to be the other parties to the agreement, unless it is some person or local authority now liable to repair the bridges. In addition to these bridges there are bridges built by private persons or bodies which have never been dedicated to public use, though the public may have used them by permission or on payment of toll. The county council may purchase or take over such bridges on terms to be agreed on.

Transfer to county council of certain powers of justices out of session.

7. There shall be transferred to the county council on and after the appointed day the business of the justices of the county out of session—

(*a*) In respect of the licensing of houses or places for the public performance of stage plays, and

(*b*) In respect of the execution as local authority of the Explosives Act, 1875.

38 & 39 Vict. c. 17.

Houses or places for the performance of stage plays are licensed under 6 & 7 Vict. c. 68. The licenses have hitherto been granted by the justices of a division in special sessions, the sessions being convened by the clerk.

The Explosives Act, 1875, is the 38 & 39 Vict. c. 17. Under that Act the local authority have been the justices in petty sessions (except in the city of London, the metropolis, boroughs, and harbours within the jurisdiction of harbour authorities). In the metropolis the local authority was the Metropolitan Board of Works, whose powers and duties are now transferred to the London County Council. The duties of local authorities under the Act cannot here be stated in detail. They relate to (1) the manufacture, (2) keeping, (3) sale, (4) transport, and (5) importation of explosives; and they include the granting of licenses and the registration of premises for the manufacture, keeping, &c., of explosives.

It is provided by section 28, *post*, that the county council may delegate their powers under the Act to any committee or district council, and they may delegate their powers under the above-mentioned Acts to justices in petty sessions. It is obvious that some such delegation will be necessary in the above cases.

Reservation of business to

8. (1) Nothing in this Act shall transfer to a county council any business of the quarter sessions or justices in relation to appeals by

any overseers or persons against the basis or standard for the county rate or against that or any other rate. Sect. 8. Sub-S. 1.

quarter sessions.

This sub-section reserves to quarter sessions their powers and duties of hearing appeals against rates generally, and also appeals against the county rate basis. It will be remembered that by section 3 (i.), *ante*, the duty of preparing the basis is transferred to the county council.

(2) All business of the quarter sessions or any committee thereof not transferred by or in pursuance of this Act to the county council shall be reserved to and transacted by the quarter sessions or committee thereof in the same manner, as far as circumstances admit, as if this Act had not passed.

This is a general reservation in respect of business not transferred to the county council. It was really unnecessary, and was probably inserted *ex cautelâ*.

9. (1) The powers, duties, and liabilities of quarter sessions and of justices out of session with respect to the county police shall, on and after the appointed day, vest in and attach to the quarter sessions and the county council jointly, and be exercised and discharged through the standing joint committee of the quarter sessions and county council appointed as hereinafter mentioned: Powers as to police.

The Acts relating to county police are 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 7 & 8 Vict. c. 33; 19 & 20 Vict. c. 69; 20 Vict. c. 2; 21 & 22 Vict. c. 68; 22 & 23 Vict. c. 32; 28 Vict. c. 35. The duty of appointing the chief constable and the general control of the police in counties, which has hitherto been exercised by the county justices under these Acts, will now be exercised by the standing joint committee appointed under section 30, *post*.

It should be observed that section 33, *post*, provides for the continuance of one police force for any county borough or other borough, and any county. In the smaller boroughs the existing police forces are abolished by section 39, *post*, which provides that for the purposes of the Acts relating to county police such boroughs are to form part of the counties in which they are situated.

(2) Provided that the powers conferred by section seven of the County and Borough Police Act, 1856, which requires constables to perform, in addition to their ordinary duties, such duties connected with the police as the quarter sessions may direct or require, shall continue to be exercised by the quarter sessions as well as by the said standing joint committee, and may also be exercised by the county council; and the said section shall be construed as if the county council and the said standing joint committee were therein mentioned as well as the quarter sessions. 19 & 20 Vict. c. 69.

The 19 & 20 Vict. c. 69, s. 7, provides that constables shall, in addition to their ordinary duties, perform all such duties connected with the police in

Sect. 9. NOTE SUB-S. 2. their respective counties or boroughs as the justices in general or quarter sessions assembled, or the watch committees of such respective counties or boroughs, from time to time direct and require. Justices in general or quarter sessions are still to retain their powers under this section, and the same powers are extended to the standing joint committee appointed under section 30, *post*, and the county council.

(3) Nothing in this Act shall affect the powers, duties, and liabilities of justices of the peace as conservators of the peace, or the obligation of the chief constable or other constables to obey their lawful orders given in that behalf.

This provision was inserted for the purpose of continuing the existing powers of justices as conservators of the peace to issue such orders as they may think necessary to the police for the preservation of the peace, the prevention of offences, and the apprehension of offenders.

Transfer to county council of powers of certain Government departments and other authorities.

10. (1) After the passing of this Act it shall be lawful for the Local Government Board to make from time to time a Provisional Order for transferring to county councils—

(*a*) Any such powers, duties, and liabilities of Her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government department, as are conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character: also

(*b*) Any such powers, duties, and liabilities arising within the county, of any commissioners of sewers, conservators, or other public body, corporate or unincorporate (not being the corporation of a municipal borough or an urban or rural authority, or a school board, and not being a board of guardians), as are conferred by or in pursuance of any statute;

and such Order shall make such exceptions and modifications as appear to be expedient, and also such provisions as appear necessary or proper for carrying into effect such transfer, and for that purpose may transfer any power vested in Her Majesty in Council:

As to the making of Provisional Orders, see section 87, *post*.

Without attempting to give an exhaustive list of the powers of Government Departments which might be transferred, the following are the principal of such powers and duties:—

Privy Council.—Powers under the Contagious Diseases (Animals) Acts, the Destructive Insects Act, &c.

Secretary of State.—Powers under the Artizans Dwellings Acts, &c.

Board of Trade.—Powers under the Pier and Harbour Acts, the Fishery Acts, Electric Lighting Act, Gas and Waterworks Acts, Merchant Shipping Acts, Tramway Acts, &c.

Local Government Board.—Powers under the Public Health Acts, Baths and Washhouses Acts, Artizans Dwellings Acts, Highway Acts, Rivers Pollution Act, &c.

Education Department.—Powers under the Education Acts.

The powers transferred must be such as are conferred by or in pursuance of a statute, and must be of an administrative (*i.e.* as distinguished from a judicial) character.

The powers of public bodies conferred by statute, other than those expressly excepted, may also be transferred by Provisional Order. The most important of these are the powers of commissioners of sewers or drainage boards under the Acts relating to the drainage of land.

It is anticipated that Provisional Orders will be made under this section at an early date.

Sect. 10. Note Sub-s. 1.

(2) Provided that before any such Order is made, the draft thereof shall be approved, if it relates to the powers, duties, or liabilities of a Secretary of State, or the Board of Trade, or any other Government department, by such Secretary of State, Board, or department, and approved, if it affects the powers, duties, or liabilities of any commissioners, conservators, or body, corporate or unincorporate, by such commissioners, conservators, or body; and every such Provisional Order shall be of no effect until it is confirmed by Parliament.

This provision renders it necessary that the draft of the Order should be perused and approved by the department or body whose powers are to be transferred, and it makes such approval in effect a condition precedent to the Order.

(3) If any such powers, duties, or liabilities as are referred to in any Provisional Order under this section arise within two or more counties, they may be transferred to the county councils of such two or more counties jointly, and may be exercised and discharged by a joint committee of such councils.

As to the appointment and powers of joint committees, see section 81, *post*.

(4) The Act of Parliament confirming any Provisional Order made under this section shall be a public general Act.

This provision enables an Order to be made altering the general law in the district to which it relates. It has also the effect of preventing its being treated for purposes of construction as a private or local Act.

11. (1) Every road in a county, which is for the time being a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878, inclusive of every bridge carrying such road if repairable by the highway authority, shall, after the

Entire maintenance of main roads by

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county council. 41 & 42 Vict. c. 77.

appointed day, be wholly maintained and repaired by the council of the county in which the road is situate, and such council, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as a highway board, and may further exercise any powers vested in the council for the purpose of the maintenance and repair of bridges, and the enactments relating to highways and bridges shall apply accordingly; and the county council shall have the same powers as a highway board for preventing and removing obstructions, and for asserting the right of the public to the use and enjoyment of the roadside wastes; and the execution of this section shall be a general county purpose, and the costs thereof shall be charged to the general county account.

It is provided by the Highway Act, 1878, 41 & 42 Vict. c. 77, as follows:—

"Section 13. For the purposes of this Act and subject to its provisions, any road which has, within the period between the thirty-first day of December, one thousand eight hundred and seventy, and the date of the passing of this Act, ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road; and one half of the expenses incurred from and after the twenty-ninth day of September, one thousand eight hundred and seventy-eight, by the highway authority in the maintenance of such road, shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority of such area by the county authority of the county in which such road is situate out of the county rate, on the certificate of the surveyor of the county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction.

Provided that no part of such expenses shall be included in—

(1) Any precept or warrant for the levying or collection of county rate within the metropolis, subject and without prejudice to any provision to be hereinafter made; or

(2) Any order made on the council of any borough having a separate court of quarter sessions under section one hundred and seventeen of the Municipal Corporations Act, 1835.

The term 'expenses' in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon.

"Section 14. The following areas shall be deemed to be highway areas for the purposes of this Act; (that is to say,)

(1) Urban sanitary districts;

(2) Highway districts;

(3) Highway parishes not included within any highway district or any urban sanitary district.

"Section 15. Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for

the application, shall cause the road to be inspected, and if satisfied that it ought to be a main road shall make an order accordingly. Sect. 11. NOTE SUB-S. 1.

"A copy of the order so made shall be deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order."

The following cases have been decided on the foregoing sections :—

A provision in Turnpike Acts coming into operation before the 31st December, 1870, that turnpike trustees shall not spend money or levy toll upon certain portions of turnpike roads does not prevent such portions of the roads from being still turnpike roads on the 31st December, 1870, within the meaning of section 13 of the Highways and Locomotives (Amendment) Act, 1878. So as to an agreement under the Local Government Act, 1858 (21 & 22 Vict. c. 98), section 41, made before the 31st December, 1870, between turnpike trustees and a corporation, under which the turnpikes upon certain portions of turnpike roads were removed, and the repair of such portions was undertaken by the corporation. *West Riding JJ.* v. *Reg.*, 8 Ap. Cas. 781; 53 L. J. M. C. 41; 49 L. T. (N.S.) 786; 32 W. R. 253; 48 J. P. 228.

The corporation of the borough of Rochdale was the highway authority of the Rochdale highway area. Under sections 47—50 of the Towns Improvements Clauses Act, 1847 (10 & 11 Vict. c. 34), the obligation to repair all public highways within the area of the "town" was imposed upon the corporation, and the turnpike trustees were forbidden to collect any toll or lay out any money on any road within that area. By a local Act of 1872 the boundaries of the borough were enlarged, and all the provisions of the Acts relating to the "town" were made applicable to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough, and within the operation of the Towns Improvement Clauses Act, 1847:—*Held*, reversing the decision of the Court of Appeal, that these further portions, being only parts of turnpike roads, had not "ceased to be turnpike roads," and were not to be deemed to be "main roads" within the above section, and that the county authority were not liable to pay half the expenses of their maintenance. *Lancashire JJ.* v. *Rochdale (Mayor of)*, 8 Ap. Cas. 494; 53 L. J. M. C. 5; 49 L. T. (N.S.) 368; 32 W. R. 65; 48 J. P. 20. In 1855 a portion of a turnpike road was included in an improvement district under a local Act incorporating the Towns Improvement Clauses Act, 1847. Thereupon, by virtue of sections 47—51 of the latter Act the maintenance of this portion of the road became vested in the Improvement Commissioners, and the turnpike trustees ceased to have power to collect toll or lay out money upon it. In 1877 the turnpike trust expired. The Commissioners were the highway authority for the district, and the district was a highway area within the meaning of the above section. It was held that notwithstanding the operation of sections 47—51 of the Towns Improvement Clauses Act, 1847, the road only ceased to be a turnpike road and became a main road within the above section upon the expiration of the turnpike trust; and that as that event happened after 1870, the county authority was liable to pay to the commissioners one half the expenses incurred by them in the maintenance of the portion of the road within their district. *Lancashire JJ.* v. *Newton-in-Makerfield Improvement Commissioners*, 11 Ap. Cas. 416; 55 L. T. (N.S.) 615; 35 W. R. 185; 56 L. J. M. C. 17; 51 J. P. 68.

By a local Act passed in 1874 the limits of the borough of M. were extended. By section 20 of that Act it was enacted that the extended area "shall be exempt from all county rates save only in respect of the purposes for which any county rates are now leviable within the existing borough." At the time of the passing of that Act general county rates were leviable within the existing borough for all purposes for which such rates could be levied in any part of the riding. It was held that the saving of such liability rendered the exemption in section 20 inoperative; and therefore the inhabitants of the extended area of

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the borough were not exempt from liability to pay county rates for the maintenance of main roads under the above section. *Middlesborough Overseers* v. *North Riding JJ.*, 12 Q. B. D. 239; 32 W. R. 671.

The word "situate" in section 13 means geographically situate. *Over Darwen (Mayor of)* v. *Lancashire JJ.*, 15 Q. B. D. 20; 54 L. J. Q. B. 51; 52 L. T. (N.S.) 739; 48 J. P. 437.

The changes effected by the text are very important. A main road will not, except in the cases provided for by the succeeding sub-sections, be repairable by the highway authority at all. The duty of repairing it will devolve upon the county council, who, for all purposes of repairing, &c., are to have the powers of a highway board. They may not merely maintain the road, but they may improve and enlarge it. The questions as to the meaning of maintenance which have been raised in recent cases are thus avoided. See *Amesbury Guardians* v. *Wiltshire JJ.*, 10 Q. B. D. 480; 52 L. J. M. C. 64; 31 W. R. 521; 47 J. P. 184; *Leek Improvement Commissioners* v. *Staffordshire JJ.*, 20 Q. B. D. 794; *Reg.* v. *Essex JJ.*, Times L. R., vol. iv., p. 676. The improvements which a highway board may make in a highway are enumerated in 27 & 28 Vict. c. 101, ss. 47, 48. They include the conversion of any road that has not been stoned into a stoned road, the widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges, and the doing of any work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair. The bridges on a main road which are at present repairable by the highway authority will become, by virtue of the text, county bridges to all intents and purposes, and will be repaired and dealt with as such by the county council.

The county councils are to have the same powers as a highway board for preventing and removing obstructions, but a highway board has no special powers for these purposes under the Highway Acts. Nor has a highway board, as such, any power to assert the right of the public to the use and enjoyment of the roadside wastes. But as some effect must be given to the words, it is probable that they will enable county councils to take all necessary proceedings to prevent and remove obstructions, and for the protection of the roadside wastes in so far as these form part of the highway and are vested in the county council under sub-section (6). Of course, in so far as the roadside wastes are not part of the highway the public can have no rights over them. As to the powers of the council to repair, &c., see also sub-section (12), *infra*.

For the definition of the phrase "general county purpose," see section 68, *post*.

It should be mentioned that, by section 35, *post*, the provisions of this section are to apply to the larger quarter sessions boroughs, and these boroughs are, for the purposes of main roads, to be deemed part of the county. As to main roads in the smaller boroughs, see section 38, *post*.

(2) Provided that any urban authority may, within twelve months after the appointed day, or in case of a road in the district of such authority becoming a main road at any subsequent date then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district of such authority, and thereupon they shall be entitled to retain the same, and, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them, and

the council shall make to such authority an annual payment towards the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of such road.

For the definition of the phrase "appointed day," see section 109, *post*.

An urban authority is the council of a borough, the local board in a local government district, or the Improvement Commissioners in an Improvement Act district.

Under the Highway Act, 1878, a borough having a separate court of quarter sessions was not a highway area for the purposes of the Act, and consequently the provisions of that Act as to main roads did not apply. By sections 35, 38, of this Act, *post*, such boroughs are to be deemed urban sanitary districts, and therefore highway areas. They may apply within two years to have roads in the boroughs declared main roads.

If an urban authority claim to retain their right of repair, the county council will be free from liability to repair, &c. Apparently the claim must be made in respect of each main road within twelve months of its becoming such.

Notice the words "maintenance, repair, and reasonable improvement." These words meet the decision in *Leek Improvement Commissioners* v. *Staffordshire JJ.*, cited in the notes to the last sub-section.

As to the amount of the annual payment, see the next sub-section.

(3) The amount of such payment shall be such annual sum as may be from time to time agreed on, or in the absence of agreement may be determined by arbitration of the Local Government Board.

For the procedure in this arbitration, see section 63, *post*.

(4) The county council and any district council may from time to time contract for the undertaking by the district council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road, and, if the county council so require, the district council shall undertake the same, and such undertaking shall be in consideration of such annual payment by the county council for the costs of the undertaking as may from time to time be agreed upon, or, in case of difference, be determined by arbitration of the Local Government Board; and for the purposes of such undertaking the district council shall have the same powers and be subject to the same duties and liabilities as if the road were an ordinary road vested in them.

The term "district council" is defined by section 100, *post*. For the purposes of the text it means at present a highway authority as defined by section 100, *post*.

The provisions of this sub-section will apply to all main roads save those which an urban authority have elected to maintain under sub-section (2), *ante*. The county council and district council may contract, but in the absence of contract the county council may require the district council to undertake, the repair of all or any main roads in their district.

As to arbitration by the Local Government Board, see section 63, *post*.

Sect. 11. NOTE SUB-S. 4. It may be observed that ordinary roads are not vested in a district council (*i.e.*, highway authorities) unless such council is an urban authority, in which case the highways are vested in the authority by virtue of section 149 of the Public Health Act, 1875. The words "vested in them" must not, therefore, be read literally, but as equivalent to "subject to their control," or some similar expression.

(5) Provided that in no case shall a county council make any payment to a district council towards the costs of such undertaking as respects any road, or towards the costs, maintenance, repair, or improvement of any road by an urban authority, until the county council are satisfied by the report of their surveyor, or such other person as the county council may appoint for the purpose, that the road has been properly maintained and repaired, or that the improvement or enlargement of or other dealing with the road, as the case may be, has been properly executed.

This sub-section has reference both to an undertaking under sub-section (4), and to maintenance by an urban authority under sub-section (2). As to arbitration in case of refusal to make a payment under this sub-section, see sub-section (9), *infra*.

(6) A main road and the materials thereof, and all drains belonging thereto, shall, except where the urban authority retain the powers and duties of maintaining and repairing such road, vest in the county council, and where any sewer or other drain is used for any purpose in connection with the drainage of any main road, the county council shall continue to have the right of using such sewer or drain for such purpose, and if any difference arises between a county council and any highway or sanitary authority as respects the authority in whom the drain is vested, or as to the use of any sewer or other drain, the council or the highway or sanitary authority may require such difference to be referred to arbitration, and the same shall be referred to arbitration in manner provided by this Act.

This is a curious provision. The main road, the materials thereof and the drains belonging thereto, are to *vest* in the county council, except where the urban authority retain the right of repairing under sub-section (2). When the urban authority does not retain this right, the road which had hitherto been vested in the urban authority by section 149 of the Public Health, Act, 1875, will cease to be vested in them and will *vest* in the county council. The meaning of the word *vest* will appear from the following decisions on the Public Health Act, 1875, section 149:—

In *Hinde* v. *Chorlton*, L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* as used in a local Act, said: "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving

them the freehold. In *Stracey* v. *Nelson*, 12 M. & W. 535; 13 L. J. Ex. 97, it was provided by an Act that certain lands should be *vested* in the commissioners of sewers, and the court held, notwithstanding, that only the control over the land, and not the freehold, passed to them." In *Bagshaw* v. *Buxton Local Board*, 1 Ch. D., at p. 222, JESSEL, M. R., said that by the term *vested* he meant vested *sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street. *Coverdale* v. *Charlton*, 4 Q. B. D. 104; 48 L. J. Q. B. 128; 40 L. T. (N.S.) 88; 26 W. R. 687; 43 J. P. 268. In that case, by an award made under an Inclosure Act passed in 1766, two private roads, E. and H., were set out. About 1818 the road E. became a public highway. Down to 1863 the surveyors of highways for the parish of C., within which E. & H. were situate, had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish of C., who in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle on the roads. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a private way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case JAMES, L. J., explained this decision as to the meaning of the words *vest in* as follows :—"What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now, what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance, and occupation, and exclusive possession of the street, and the making and maintaining of the street for the use of the public." *Rolls* v. *St. George the Martyr, Southwark* (*Vestry of*), 14 Ch. D. 785; 49 L. J. Ch. 691; 43 L. T. (N.S.) 140; 28 W. R. 867; 44 J. P. 680. In that case the plaintiff having, with the sanction of the Metropolitan Board of Works, made a new street over his land, upon which land were two old streets, N. and A., an order was made at quarter sessions for stopping up part of N. street as unnecessary, and an order was also made for diverting a part of A. street and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped up part of N. nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal, reversing the decision of the Master of the Rolls, that under 18 & 19 Vict. c. 120, s. 96, all streets being for the time being highways are vested in the vestry, but only so long as they are highways, and that when they cease to be highways by being legally stopped up or diverted, the interest of the vestry determines. And it was therefore held that the plaintiff was entitled to convert to his own use the stopped up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate under 5 & 6 Vict. c. 50, s. 91, that the substituted street had been completed and put into good condition and repair. Where a street was carried across a railway situate in a deep cutting, the bridge being erected pursuant to the Railway Clauses Act, 1845 (8 & 9 Vict. c. 20, ss. 46—51), it was held that the vesting

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of the street in the vestry under 18 & 19 Vict. c. 120, s. 105, did not give the vestry any property in the bridges or its fences, but merely vested in them the carriageway and footpaths and the materials of which these were made. *Great Eastern Railway Company* v. *Hackney Board of Works*, 8 Ap. Cas. 687 ; 52 L. J. M. C. 105 ; 49 L. T. (N.S.) 509 ; 48 J. P. 52. The vesting of the streets in the urban authority under this section does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the telephone wire being erected at a great height and causing no appreciable danger to the public or to the traffic in the street. *Wandsworth District Board of Works* v. *United Telephone Company*, 13 Q. B. D. 904 ; 53 L. J. Q. B. 449 ; 51 L. T. (N.S.) 148 ; 32 W. R. 776 ; 48 J. P. 676.

It is presumed that the vesting of the street will extend to the entire highway which the public have the right to use, and that includes not only the *via trita* but the entire space between the fences dedicated to the use of the public and capable of being used by them. See on this subject, *Reg.* v. *United Kingdom Telegraph Company*, 3 F. & F. 73 ; 9 Cox C. C. 144, 174 ; 31 L. J. M. C. 166 ; 2 B. & S. 647; 6 L. T. (N.S.) 378 ; *Turner* v. *Ringwood Highway Board*, L. R. 9 Eq. 418 ; *Nicol* v. *Beaumont*, 53 L. J. Ch. 853 ; 50 L. T. (N.S.) 112.

Ordinary Highway Drains will vest with the main road in the county council. But where the drainage of the road flows into a drain or sewer belonging to a sanitary authority the right of user is to continue.

The mode of arbitration referred to in this sub-section is that prescribed by section 62, sub-sections (2) (3), *post*.

(7) Where a county council declare a road to be a main road, such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.

This provision is in effect an amendment or proviso to the Highway Act, 1878, section 15, which has been quoted in the note to sub-section (1) *ante*. As to arbitration if dispute arises as to the condition of the road, see sub-section (9), *infra*.

(8) If at any time the county council are satisfied, on the report of their surveyor or other person appointed by them for the purpose, that any portion of a main road, the maintenance and repair of which are undertaken by any district council, is not in proper repair and condition, the county council may cause notice to be given to such district council, requiring them to place the road in proper repair and condition ; and, if such notice is not complied with within a reasonable time, the county council may do everything that seems to them necessary to place the road in proper repair and condition, and the expenses of so doing shall be a debt of the said district council to the county council.

This provision applies only to main roads of which the repair has been undertaken under sub-section (4). It does not apply to main roads repaired by an urban authority under sub-section (2). As to arbitration in cases of dispute under this sub-section, see sub-section (9), *infra*.

(9) If any difference arises under this section between a county council and a district council as to the refusal of the county council

to make a payment under this section to the district council in respect of any undertaking or road, or as to a road having been placed in proper repair and condition previously to its becoming a main road, or as to any notice given to the district council by the county council to place a road in proper repair and condition, such difference shall, if either council so require, be referred to the arbitration of the Local Government Board.

The differences here referred to are such as may arise under sub-sections (5), (7), and 8.

The arbitration of the Local Government Board is regulated by section 63, *post*.

(10) The county council may, if they think fit, contribute towards the cost of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a main road.

This is a useful provision. For the meaning of the term *improvement*, see the note to sub-section (1).

(11) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any main road in their district.

The authorities having power to light roads are, in urban districts, the urban authority, by virtue of the Public Health Act, 1875, section 161; and in rural districts the Lighting Commissioners, under 3 & 4 Will. 4, c. 90. The power and duty to light roads is to extend to main roads.

(12) Anything authorised or required by law to be done by or to a highway or road authority shall, as respects a main road maintained by a county council, be authorised or required to be done by or to that council; and every authority having any power to break up any road in their district for the purpose of sewerage or otherwise shall have the like power of breaking up any main road in their district, but if the road is broken up the authority shall repair it to the satisfaction of the county council maintaining such road, and if it is not repaired to the satisfaction of the county council, that council may cause the necessary repairs to be done and may charge the costs against the authority, and the same shall be a debt due from the authority to the council.

The first part of this sub-section gives to a county council with respect to a main road all the powers of a highway authority, *i.e.*, of a highway surveyor or highway board so far as relates to anything authorised or required by law to be done by or to a highway. This is a more comprehensive power than that conferred by sub-section (1), *ante*.

Power to break up roads is given by a number of statutes, of which the

Sect. 11. NOTE SUB-S. 12. chief are the Public Health Act, 1875, sections 16, 54: the Gas Works Clauses Act, 1847, sections 6—12; the Waterworks Clauses Act, 1847, sections 28—34; the Tramways Act, 1870, sections 26—33; the Electric Lighting Act, 1882, section 12, &c.

The provisions of the text as to the reinstating of the road are in addition to those contained in the above Acts.

41 & 42 Vict. c. 77. (13) Section twenty of the Highways and Locomotives (Amendment) Act, 1878, shall apply as if it were herein re-enacted and in terms made applicable to this section.

The 41 & 42 Vict. c. 77, s. 20, is as follows:—

"Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their county to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged."

The following is an extract from a letter dated 18th September, 1878, from the Local Government Board with reference to this section:—

"The wording of this section, which was introduced at a very late stage of the Bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; but it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities. The justices will not fail to observe that where the alternative given by the section is adopted, it is desirable that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate."

The provisions of the above section will remain in force when it is applicable. It will be remembered that the hundred rate will henceforth be made by the county council under section 3 (i.).

Roads and tolls in Isle of Wight. **12.** (1) After the appointed day, tolls shall cease to be taken on any road maintained and repaired by the Isle of Wight Highway Commissioners, under the Isle of Wight Highway Acts, 1813 and 1883, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to the Isle of Wight, and to every such road above mentioned, in like manner as if it were ceasing within the meaning of the said Act to be a turnpike road, and the Act of the session of the forty-fourth and forty-fifth years of the reign of Her present Majesty, chapter seventy-two, shall be repealed.

44 & 45 Vict. c. 72.

The Isle of Wight Highway Acts are 53 Geo. 3, c. xcii. and 46 & 47 Vict c. ccxxvi.

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The Isle of Wight has hitherto been exempt from the operation of the Highway Acts, see 5 & 6 Will 4, c. 50, s. 113; 25 & 26 Vict. c. 61, s. 7; 41 & 42 Vict. c. 77, ss. 2, 27; 44 & 45 Vict. c. 72. After the appointed day all the roads in the Isle of Wight will be repairable as main roads, subject, however, to the proviso contained in the next sub-section.

(2) Until provision is otherwise made by Parliament, or by a Provisional Order confirmed by Parliament, the repair and maintenance of the said roads shall continue to be undertaken by the said commissioners, and the county council for the county of Southampton shall pay such commissioners, in respect of the said repairs and maintenance, and of the expenses of the Commissioners, such sums as may be agreed upon, or, in case of difference, be settled by arbitration under this Act, and the provisions of this Act with respect to main roads shall apply as if the Commissioners were a district council who had undertaken the maintenance and repair of such road.

As to the making of a Provisional Order, see section 87, *post*.
As to arbitration under this Act, see section 62, *post*.
The provisions of this Act are to apply as if the Commissioners were a district council who had undertaken the repair of the roads under section 11, sub-section (4), *ante*.

Adaptation of Act to South Wales roads. 7 & 8 Vict. c. 91. 25 & 26 Vict. c. 61. 27 & 28 Vict. c. 101.

13. (1) After the appointed day no county road rate shall be levied, and tolls shall cease to be taken on any road maintained and repaired by a county roads board in South Wales, in pursuance of the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act shall apply to every county in South Wales as if the highway districts in that county had been constituted under the Highway Act, 1862, and the Highway Act, 1864, or one of those Acts, and shall apply to every such road as above mentioned, in like manner as if it were ceasing, within the meaning of the said Act, to be a turnpike road.

Under the 7 & 8 Vict. c. 91, county roads boards were created for the management of all turnpike roads in the six counties of South Wales. Their expenses were defrayed out of tolls which were paid into the County Roads Fund, and if the sum so raised was insufficient the deficiency was certified to the quarter sessions who made a county roads rate. Under 14 & 15 Vict. c. 16, the six counties were divided into county districts, and these districts were continued under 23 & 24 Vict. c. 68, and the highways in these districts were managed by highway boards, whose expenses were defrayed out of highway rates levied by the overseers of each parish. These districts were not subject to the Highway Acts, 1862 and 1864. See 25 & 26 Vict. c. 61, s. 7; 41 & 42 Vict. c. 77, s. 2. The text provides that in future all roads subject to the control of the county roads boards shall become main roads, and that the highway districts shall be deemed to be highway districts under the Highway Acts, and that the provisions of this Act as to main roads shall apply to such main roads.

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(2) On the appointed day every county roads board and district roads board in each county shall cease to exist, and the property, debts, and liabilities of any such board shall be transferred to the county council, and that council shall be the successors of the county and district roads boards, and the provisions of this Act, with respect to the transfer of the property, debts, and liabilities of quarter sessions to county councils, and with respect to the officers and servants of quarter sessions, shall apply as if they were herein re-enacted and made applicable to the property, debts, liabilities, and officers of the said county and district roads boards.

The district roads boards here referred to were boards appointed by the county roads board under 7 & 8 Vict. c. 91, to take the management of turnpike roads in districts into which the six counties were divided, subject, however, to the superintendence and authority of the county roads boards. All these bodies are now abolished, and their property, debts, &c., are transferred to the county councils in like manner as if it were property, &c., under section 64, *post*. The provisions as to officers are contained in sections 118—120, *post*.

(3) For the following purposes (that is to say):

(*a*) For giving effect to the said transfer of the property, debts, and liabilities, and for controlling the officers and servants transferred by this section to the county council, and otherwise winding up the affairs of the county and district roads boards; and

(*b*) For the purpose of the appointment of the surveyor of a highway board, the alteration of a highway district, and other purposes relating to highway boards;

the county council of every county in South Wales shall have all the powers of a county roads board in a county under the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, so, however, that nothing shall confer on the county council any power to levy any toll or county road rate.

This provision simply provides that the county councils shall have all the powers of a county roads board for the purposes specified.

The surveyor of a highway board is appointed under 22 & 23 Vict. c. 68, s. 3; highway districts are altered under section 2.

Power to county council to enforce provisions of 39 & 40 Vict. c. 75.

14. (1) On and after the appointed day a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers

and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district. Sect. 14. Sub-s. 1.

The Rivers Pollution Act may be enforced by sanitary authorities. County councils have similar powers by virtue of the provisions in the text. The Act will be found set out in *Lumley's Public Health*, p. 986. The consent of the Local Government Board must be obtained before proceedings can be taken in respect of manufacturing and mining pollutions.

(2) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council or by any urban or rural authority.

The prosecution here referred to is a proceeding in the county court under the Act, or an indictment or similar proceedings.

(3) The Local Government Board, by Provisional Order made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order; and the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers.

As to the making of a Provisional Order, see section 87, *post*.
As to the definition of an "administrative county," see section 100, *post*.
The joint committee may be invested under this sub-section with all necessary powers to prevent the pollution of a stream at any point of its course. Under sub-section (1) the control of a county council is limited to so much of the stream as is within or adjoins the county.

15. The county council of an administrative county shall have the same powers of opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county, as are conferred on the council of a municipal borough by the Act of the thirty-fifth and thirty-sixth years of Victoria, chapter ninety-one; and subject as hereinafter provided the provisions of that Act shall extend to a county council as if such council were included in the expression "governing body," and the administrative county were the district in the said Act mentioned. Council to have power to oppose Bills in Parliament.

Sect. 15. Provided that—

(*a*) No consent of owners and ratepayers shall be required for any proceedings under this section;

(*b*) This section shall not empower a county council to promote any Bill in Parliament, or to incur or charge any expense in relation thereto.

The Municipal Corporations (Borough Funds) Act, 1872, 35 & 36 Vict. c. 91, enables a governing body to defray out of the rates at their disposal the costs of promoting or opposing parliamentary or other proceedings for the benefit of the inhabitants. The text gives to a county council similar powers, except that they may not promote a Bill in Parliament. It is necessary, however, that the costs must be incurred in pursuance of a resolution of an absolute majority of the whole number of the county council after notice given as prescribed by section 4 of the Act, and the approval of the Local Government Board or of a Secretary of State must be obtained. The consent of the owners and occupiers required by that section is, however, dispensed with in the case of a county council.

As to the general power of a public body to incur legal expenses in defence of its powers and property apart from the statute, see *The Attorney-General* v. *The Mayor, &c., of Brecon*, 10 Ch. D. 204; *Reg.* v. *White*, 14 Q. B. D. 358; 54 L. J. M. C. 23; 52 L. T. (N.S.) 116; 33 W. R. 248; 49 J. P. 294; *Cleverton* v. *St. Germans Rural Sanitary Authority*, 56 L. J. Q. B. 83.

Power of county council to make bye-laws. 45 & 46 Vict. c. 50. 38 & 39 Vict. c. 55.

16. (1) A county council shall have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making bye-laws in relation to their borough under section twenty-three of the Municipal Corporations Act, 1882, and section one hundred and eighty-seven of the Public Health Act, 1875, shall apply to such bye-laws:

(2) Provided that bye-laws made under the powers of this section shall not be of any force or effect within any borough.

The provisions of section 23 of the Municipal Corporations Act, 1882, are set out, *post*. See the notes to that section.

Section 187 of the Public Health Act, 1875, is as follows:—

"Bye-laws made by the council of any borough under the provisions of section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act."

The meaning of the provision in the text as to the application of this section appears to be that all bye-laws made by a county council, whether for the good government of the county or for the prevention and suppression of nuisances, must be made and confirmed pursuant to sections 182—186 of the Public Health Act, which are as follows:—

"All bye-laws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: Provided that no bye-law made under this Act by a local authority shall

be of any effect if repugnant to the laws of England or to the provisions of this Act. Sect. 16. NOTE SUB-S. 2.

Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty.

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper; nor shall any such bye-laws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A bye-law required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority.

All bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, on his application for the same; a copy of any bye-laws made by a rural authority shall also be transmitted to the overseers of every parish to which such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

A copy of any bye-law made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making, confirmation, and existence of such bye-laws without further or other proof."

Power of county councils to appoint medical officer of health.

17. (1) The council of any county may, if they see fit, appoint and pay a medical officer of health, or medical officers of health, who shall not hold any other appointment or engage in private practice without express written consent of the council.

For the qualification of these medical officers of health, see the next section.

(2) The county council and any district council may from time to time make and carry into effect arrangements for rendering the services of such officer or officers regularly available in the district of the district council, on such terms as to the contribution by the

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district council to the salary of the medical officer, or otherwise, as may be agreed, and the medical officer shall have within such district all the powers and duties of a medical officer appointed by a district council.

The object of this provision is to enable the medical officer to exercise jurisdiction over a wider area, and to give him greater freedom and independence in the discharge of his duties.

The powers and duties of a medical officer of health appointed by a district council (*i.e.* by a sanitary authority; see section 100, *post*) are contained in the Public Health Act, 1875, but are too numerous to be stated here in detail.

(3) So long as such an arrangement is in force, the obligation of the district council under the Public Health Act, 1875, to appoint a medical officer of health shall be deemed to be satisfied without the appointment of a separate medical officer.

The obligation of a district council here referred to is that arising under sections 189, 190, of the Public Health Act, 1875. If the district council enter into an arrangement with the county council under sub-section (2), they need not appoint a medical officer for their own district.

Qualification of medical officers of health.

18. Except where the Local Government Board, for reasons brought to their notice, may see fit in particular cases specially to allow, no person shall hereafter be appointed the medical officer of health of any county or county district, or combination of county districts, or the deputy of any such officer, unless he be legally qualified for the practice of medicine, surgery, and midwifery.

For the definition of "county district," see section 100, *post*. At present it means an urban or rural sanitary district.

Medical officers may be appointed for a combination of districts under the Public Health Act, 1875, section 191. That section is materially modified by the text as to the qualification of a medical officer, who must now be legally qualified in medicine, surgery, and midwifery pursuant to 49 & 50 Vict. c. 48. The Local Government Board may dispense with the necessity of this triple qualification, subject, however, to the provisions of the next sub-section.

(2) No person shall after the first day of January, one thousand eight hundred and ninety-two, be appointed the medical officer of health of any county or of any such district or combination of districts, as contained, according to the last published census for the time being, a population of fifty thousand or more inhabitants, unless he is qualified as above-mentioned, and also either is registered in the medical register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886, or has been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of

49 & 50 Vict. c. 48.

districts, with a population according to the last published census of not less than twenty thousand, or has before the passing of this Act been for not less than three years a medical officer or inspector of the Local Government Board. Sect. 18. Sub-s. 2.

After the 1st January, 1892, no medical officer of health may be appointed for any county, district, or combination of districts containing a population of over 50,000 unless (1) he possesses the triple qualification already mentioned, and has, in addition, been registered as the holder of a diploma in sanitary science under 49 & 50 Vict. c. 48, s. 21; or (2) has during 1889, 1890, and 1891 been a medical officer for a district or combination of districts having a population of over 20,000; or (3) has been for three years previous to the 13th August, 1888, a medical officer or inspector of the Local Government Board.

19. (1) Every medical officer of health for a district in any county shall send to the county council a copy of every periodical report of which a copy is for the time being required by the regulations of the Local Government Board to be sent to the Board, and if a medical officer fails to send such copy the county council may refuse to pay any contribution, which otherwise the council would in pursuance of this Act pay, towards the salary of such medical officer. Power of county council as to report of medical officer of health.

The periodical reports here referred to are those prescribed by the Local Government Orders, for which see *Glen's Local Government Orders*. They include the quarterly returns of sickness and death and the annual report made in the month of December in every year.

The contribution of the county council towards the salary of the medical officer is payable under section 24, sub-section (2), *post*.

(2) If it appears to the county council from any such report that the Public Health Act, 1875, has not been properly put in force within the district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Local Government Board on the matter.

This representation will probably amount to a complaint under section 299 of the Public Health Act, 1875. If so, the Local Government Board, if satisfied of the alleged default after due inquiry, may make an order on the local authority for the performance of their duty, and may enforce this order by *mandamus*, or they may appoint a person for the performance of the duty and recover the expenses from the authority.

Financial Relations between Exchequer and County, and Contributions by County for Costs of Union Officers.

20. (1) After the financial year ending on the thirty-first day of March next after the passing of this Act, the Commissioners of Inland Revenue shall from time to time, in such manner and under Payment to county council of proceeds of

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such regulations as the Treasury from time to time prescribe, pay into the Bank of England to such account (in this Act referred to as the Local Taxation Account) as may be fixed by the regulations, such sums as may be ascertained in manner provided by the regulations to be the proceeds of the duties collected by those Commissioners in each administrative county in England and Wales on the licenses (in this Act referred to as local taxation licenses) specified in the First Schedule to this Act, and for the purposes of this section all penalties and forfeitures recovered in respect of the said duties shall be considered as part of the proceeds of the duties.

As to the financial year, see section 73, *post*.
This section will come into operation on the 1st April, 1889. During the present financial year temporary provisions are made by section 121, *post*.
For the definition of "administrative county," see section 100, *post*.
See Schedule I., *post*, as to the licenses here referred to.

(2) The amount ascertained as aforesaid to have been collected in each county in respect of duties on local taxation licenses shall, from time to time, be certified by the Commissioners of Inland Revenue, and paid under the direction of the Local Government Board out of the Local Taxation Account to the council of such county. The Commissioners may, if they think fit, vary such certificate, but unless so varied, their certificate shall be conclusive.

The amount is to be ascertained in manner provided by the regulations of the Treasury, under sub-section (1). These regulations have not yet appeared.

(3) It shall be lawful for Her Majesty the Queen from time to time by Order in Council made on the recommendation of the Treasury to transfer to county councils as from the date specified in the Order the power to levy the duties on all or any of the local taxation licenses, and after such date every county council and their officers shall (subject nevertheless to any exceptions and modifications contained in the Order) have within their county, for the purpose of levying the duties transferred, the same powers, duties, and liabilities as the Commissioners of Inland Revenue and their officers have with respect to the duties transferred, and to the issue and cancellation of licenses on which the duties are imposed, and other matters under the Acts relating to those duties and licenses, and all enactments relating to those duties and licenses, and to punishments and penalties connected therewith, shall apply accordingly.

In the first instance the duties will be collected, and the Acts relating to the licenses will be enforced by the officers of Inland Revenue as heretofore,

the amount levied being paid in to the Local Taxation Account under sub-section (1). The text enables all the duties, &c., as to the levying and enforcing of the duties, to be transferred to the county council and their officers, subject, however, to the provisions of the next sub-section.

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(4) Provided as follows:—

(i.) All penalties and forfeitures recovered by a county council in pursuance of this section shall, instead of being paid to the Exchequer, be paid to the county fund, and carried to the same account as the duties.

(ii.) The county council shall have, as respects the said duties and licenses, the power given by the said Acts to the Treasury for the restoration of any forfeiture, and the mitigation or remission of any penalty or any part thereof.

(iii.) Nothing in this section shall confer on the county council any special privileges of the Crown as respects legal proceedings.

As to the county fund and accounts, see section 68. The duties and penalties will be paid to the Exchequer Contribution Account, under section 23, *post*.

As to the powers of the Treasury to restore forfeitures, &c., see 7 & 8 Geo. 3, c. 53, s. 99.

(5) On a transfer under this section of the power to levy the duties on any license—

(*a*) The county council shall provide for issuing, in different parts of their county, their license for the same purpose, so as to enable persons to obtain it near their residences; and

(*b*) If such license has operation in any place in the United Kingdom outside the county in which it is issued, the license of a county council for the same purpose shall continue to have the like operation outside the county in such place.

Many licenses, such as gun and dog licenses, are available throughout the country. Such licenses will still have the same operation. It will be necessary for the county councils to have local offices or agents for the grant of licenses and the payment of duties.

Grant to county council of portion of probate duty.

21. After the financial year ending the 31st day of March next after the passing of this Act, the Commissioners of Inland Revenue shall, from time to time, in such manner and under such regulations as the Treasury may from time to time prescribe, pay into the Bank of England to the Local Taxation Account, such sums as may be ascertained in manner provided by the regulations to be

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four-fifth parts of one half of the proceeds of the sums collected by them in respect of the probate duties, and for the purpose of this section "probate duties" means the stamp duties charged on the affidavit required from persons applying for probate or letters of administration in England, Wales, or Ireland, and on the inventory exhibited and recorded in Scotland, and also the stamp duties charged on such accounts of personal and movable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, and also includes the proceeds of all penalties and forfeitures recovered in relation to such stamp duties.

44 & 45 Vict. c. 12.

For the Local Taxation Account, see section 20, sub-section (1), *ante*.

The accounts specified in 44 & 45 Vict. c. 12, s. 38, include accounts of property taken under a *donatio mortis causa*, or under a voluntary disposition, which shall not have been *bonâ fide* made three months before the death of the deceased; of property voluntarily vested by a person in his own name and that of another, so that the beneficial interest passes on death to the survivor; of property passing under a voluntary settlement, under which a person deceased reserved an interest to himself, &c.

Distribution of probate duty grant.

22. (1) The sums paid in pursuance of this Act to the Local Taxation Account, in respect of the proceeds of the probate duties (in this Act referred to as the "probate duty grant"), shall, until Parliament otherwise determine, be distributed among the several counties in England and Wales in proportion to the share which the Local Government Board certify to have been received by each county during the financial year ending the thirty-first day of March next before the passing of this Act out of the grants heretofore made out of the Exchequer in aid of local rates, which will cease to be granted after the passing of this Act, and the share to be so certified shall be estimated in such manner as the Local Government Board direct.

The share to which each county will be entitled will thus depend on the amount received by it during the year ending March 31st, 1889, out of the Exchequer in aid of local rates, and the proportion so determined will remain fixed until Parliament otherwise provides.

(2) In the case of the six counties of South Wales and the Isle of Wight there shall be added to the amount actually received out of such grants as aforesaid such additional sum as the Local Government Board certify to be the amount which each of the said counties and the Isle of Wight would have received, if the roads maintained by the county roads boards or the highway commissioners had been main roads.

As already stated (see the notes to sections 12 & 13), *ante*, the Isle of Wight and the counties in South Wales were not subject to the Highway Acts, and

consequently no sum was ever granted out of the Exchequer in respect of main roads in these places. Now that they are subject to the Highway Acts, it is necessary to make provision for them as stated in the text. Sect. 22. Note Sub-s. 2.

(3) The proportion to be paid to each county shall, from time to time, be paid under the direction of the Local Government Board to the county council out of the Local Taxation Account. The Board may, if they think proper, vary their certificate, but unless it is so varied, their certificate shall be conclusive.

As to the Local Taxation Account, see section 20, *ante*.

Application of duties on local taxation licenses and probate duty grant.

23. (1) All sums from time to time received by a county council in respect of—

(*a*) the duties on the local taxation licenses, whether collected by the Commissioners of Inland Revenue or by the county council; and

(*b*) the probate duty grant,

shall be paid to the county fund and carried to a separate account, in this Act referred to as the Exchequer Contribution Account.

As to the duties on local taxation licenses, see section 20, *ante*.
As to the probate duty grant, see sections 21, 22, *ante*.
As to the county fund, see section 68, *post*.

(2) All sums for the time being standing to the Exchequer Contribution Account shall be applied—

(i.) in paying the costs incurred in respect thereof, or otherwise chargeable thereon; and

(ii.) in payment of the sums required by this Act to be paid by the county council in substitution for local grants; and

(iii.) in payment of the grant required by this Act to be made by the county council in respect of costs of union officers; and

(iv.) in repaying to the general county account of the county fund the costs on account of general county purposes for which the whole of the area of the county is liable to be assessed to county contributions;

and shall be so applied in the order above mentioned.

It is not quite clear what costs are incurred in respect of the Exchequer Contribution Account or are chargeable thereon.
The payment in substitution for local grants is made under section 24, *post*.
The payment in respect of union officers is made under section 26, *post*.
General county purposes are defined by section 68, *post*.

(3) If any surplus remains after paying the above costs and sums, such proportion of the surplus, as the total rateable value of

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the area of each quarter sessions borough exempt from contributing to any special county purpose, bears to the rateable value of the whole county, shall be paid to the council of that borough, and the remainder shall be applied as follows:

For the definition of a quarter sessions borough, see section 100, *post*.
As to the determination of the rateable value, see sub-section (10) and section 100, *post*.
Special county purposes are defined by section 68, *post*.

(4) It shall first be applied towards repaying to the proper special accounts of the county fund, the costs on account of which the area of the county, exclusive of such quarter sessions boroughs, is liable to be assessed to county contributions;

As to the special accounts of the county fund, see section 68, *post*.

(5) Provided that where any of the said quarter sessions boroughs to which a payment of a proportion of the surplus is made as aforesaid is liable to be assessed to county contributions for any of such last-mentioned costs, there shall be deducted from the amount payable to the council of that borough in respect of the said surplus, such sum as would have been raised within the area of the borough if the amount of such costs had been raised by county contributions.

A proportion of the surplus is payable to a quarter sessions borough under sub-section (3). The deduction to be made is to be the sum which would have been raised within the borough in respect of the costs mentioned in sub-section (4).

(6) If there remains any sum after repaying the said costs to the said accounts of the county fund, such residue shall be divided as follows, that is to say, such proportion thereof, as the total rateable value of the area of each borough maintaining a separate police force under the County and Borough Police Acts, and not being a quarter sessions borough above-mentioned, bears to the rateable value of the whole county, after deduction of the rateable value of every quarter sessions borough above-mentioned, shall be paid to the council of the borough, and the rest shall be applied towards repaying to the proper special accounts of the county fund the costs of the police, and other costs on account of which the area of the county, exclusive of all the said boroughs, is liable to be assessed to county contributions. Where a town, not being a borough, maintains its own police and receives any payment from the county council in pursuance of this Act towards the pay and clothing of such police, this enactment shall apply to such town as if it were a

borough, and as if the sanitary authority therein were the council of the borough.

In applying this sub-section it is necessary first to ascertain the rateable value of the county, exclusive of the quarter sessions boroughs mentioned in sub-section (3). The proportion payable to the boroughs maintaining a separate police force is the proportion which the rateable value of such borough bears to that ascertained as above stated.

As to rateable value, see sub-section (10) and section 100, *post*.

As to the special county accounts, see section 68, *post*.

The latter part of the sub-section applies only to a few towns which are boroughs in everything but name, and are governed under a local Act.

(7) If any balance remains after all the above payments are made, and is in excess of what the county council consider necessary to carry forward to the next account, such excess shall be divided among the district councils other than the councils of quarter sessions or other boroughs to whom portions of the surplus have been paid under the foregoing provisions of this section, and shall be so divided in proportion to the rateable value of the area of each district.

The county council have therefore a discretion to carry over the entire balance to the next account.

The district councils are the urban and rural sanitary authorities other than borough councils receiving any payment under the preceding sub-sections. As to rateable value, see sub-section (10) and section 100, *post*.

(8) Where any part of a county is situate within the Metropolitan Police district, this section shall apply as if that part were the area of a borough maintaining a separate police force, save that the sum which would be payable to such borough shall be paid to the district councils of the county districts wholly or partly situate in such part, and shall be divided among such district councils in proportion to the rateable value of the area of each district, or of so much thereof as is within the Metropolitan Police district.

The Metropolitan Police District comprises an area which may be roughly described as within a radius of 15 miles from Charing Cross. Its boundaries are fixed by 10 Geo. 4, c. 44, and by Orders in Council made under 2 & 3 Vict. c. 47, and 3 & 4 Vict. c. 84. The area is to be treated as if it were a borough within sub-section (6), but the sum ascertained as provided by that sub-section is to be distributed among the district councils.

(9) All sums paid in pursuance of this section shall be carried, if paid to the council of a borough, to the borough fund, and if paid to a district council other than the council of a borough, to the district fund, and shall be applied to purposes for which the whole of the borough or district is liable to be rated.

The district fund is, in urban districts, the general district fund under the Public Health Act, 1875, section 209. In a rural district, the sum paid must be applied like a sum raised for general expenses under sections 229, 230, of that Act.

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(10) The rateable value, for the purpose of this section, shall be determined according to the standard or basis for county contributions for the time being.

As to the rateable value when there is no such standard or basis, see section 100; and as to the mode of calculating the rateable value of both a county and a county borough, see section 33, *post*.

Payments by county council in substitution for annual local grants out of Exchequer in aid of local rates.

24. Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will by reason of the duties on the local taxation licenses and the probate duty grant being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows:—

(1) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the thirty-first day of March next after the passing of this Act without prejudice to any right accrued before that day.

As to the local taxation licenses, see section 20, *ante*.
As to the probate duty grant, see sections 21, 22, *ante*.

(2) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county fund and charge to the Exchequer Contribution Account the following sums, that is to say—

(*a*) They shall pay to the guardians for every poor law union or officer for any other area wholly or partly in the county (as the case may be) such sums as the Local Government Board from time to time certify to be due from the said council in substitution for the local grants towards the remuneration of teachers in poor law schools, and for payments to public vaccinators under section five of the Vaccination Act, 1867; and

30 & 31 Vict. c. 84.

As to the Exchequer Contribution Account, see section 23, *ante*.

The sums hitherto paid have been the whole of the salaries of teachers in poor law schools.

By 30 & 31 Vict. c. 84, s. 5, on reports made to the Lords of the Privy Council with regard to the number and quality of the vaccinations performed in the several vaccination districts in England, or any of them, the said Lords might from time to time, out of moneys provided by Parliament, and under regulations to be approved by the Treasury, authorise to be paid to any public vaccinators, in addition to the payments received by them from guardians or overseers, further payments not exceeding in any case the rate of one shilling for each child whom the vaccinator had successfully vaccinated during the time to which the award of the said Lords related.

In both of these cases the sums to be paid to the guardians of unions or officers of other poor law areas will be ascertained and certified by the Local Government Board.

(*b*) They shall pay to the guardians of every poor law union the school fees paid for pauper children sent from a workhouse to a public elementary school outside the workhouse; and

This provision meets the case of children not educated in the workhouse but sent to a public elementary school.

(*c*) They shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the Public Health Act, 1875, or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board under any of the said Acts, a sum equal to such half of the salary shall be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer and not to the said local authority; and

38 & 39 Vict. c. 55.

At present every urban and rural sanitary authority must appoint one or more medical officers of health and inspectors of nuisances, and in future if any authority avail themselves of the services of a county medical officer under section 17, sub-section (3), they are to be deemed to have made the necessary appointment of a medical officer. (See sub-section (3), *post*.)

The qualification of medical officers of health, save in so far as it is expressly provided by this Act (see section 18, *ante*), and the appointment, salary, &c., of these officers and the inspectors of nuisances, are prescribed by sections 189—191 of the Public Health Act, 1875, and various orders of the Local Government Board, which will be found in *Glen's Local Government Orders*.

As to the reports of the medical officer, see the note to section 19, sub-section (1). The medical officer must send copies of these reports to the county council, otherwise they may refuse to pay the contribution towards his salary, but it is only in case of his failure to send the reports to the Board that the amount of the contribution is to be paid into the Exchequer.

(*d*) They shall pay to the guardians paying the registrars of births and deaths for any district wholly or partly in the county a sum equal to the amount paid out of local grants towards the remuneration of the registrars paid by those guardians during the financial year ending on the thirty-first day of March next after the passing of this Act; and

This will be a fixed amount determined by the sum paid in the year ending the 31st March, 1889.

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(*e*) They shall transfer to that account of the county fund to which the maintenance of any pauper lunatic chargeable to the county is charged, a sum equal to four shillings a week for each such pauper lunatic, for whom the net charge upon the county council, after deducting any amount received by the county council for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so transferred; and

Pauper lunatics are chargeable to the county by virtue of justices' orders under 16 & 17 Vict. c. 97, s. 98. The amounts referred to which may be received by the county council may consist of property of the lunatic ordered to be applied towards his maintenance under section 104 of that Act or the like.

(*f*) They shall pay to the guardians of every poor law union wholly or partly in the county a sum equal to four shillings a week for each pauper lunatic chargeable to that union, and maintained in an asylum, registered hospital, or licensed house, for whom the net charge upon the guardians, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid; and

A pauper lunatic is chargeable to the union from which he is sent unless he be adjudged chargeable to another union. See 16 & 17 Vict. c. 97, ss. 95—101.

(*g*) They shall pay to the council of each borough to which the maintenance of any pauper lunatic is chargeable, a sum equal to four shillings a week for each such pauper lunatic for whom the net charge upon the council of the borough, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid; and

If a pauper lunatic whose settlement cannot be found is sent to an asylum from a borough which has a separate quarter sessions and is not liable under 5 & 6 Wm. 4, c. 76, s. 117, to county rates, or which under 12 & 13 Vict. c. 82, is exempted from liability to contribute to the payment of the expenses incurred for maintaining pauper lunatics chargeable to the county in which such borough is situate, such lunatic shall be adjudged to be chargeable to the borough in which he is found.

As to the construction of this section, see *Birmingham (Guardians of)* v. *Beaumont*, 8 E. & B. 870; 27 L. J. M. C. 181; 4 Jur. (N.S.) 686; 22 J. P. 82; 2 E. & E. 181; 29 L. J. M. C. 56; 6 Jur. (N.S.) 218.

(*h*) They shall transfer to that account of the county fund to which the compensation payable to the clerk of the peace of a county, or any other officer of quarter sessions for the county, under section eighteen of the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty-six, is charged, the amount of such compensation; and

The 18 & 19 Vict. c. 26, s. 18, provides as follows :—" Immediately after the passing of this Act, the Commissioners of Her Majesty's Treasury shall, upon the application of any clerk of the peace or other officer of quarter sessions, by such means and in such manner as they may think proper, inquire into and ascertain the annual amount to be computed upon an average of five years immediately preceding the passing of this Act or of such shorter period as such clerk of the peace or other officer shall have been in office, of the fees and emoluments in criminal prosecutions received by the clerk of the peace or such other officer, and the said Commissioners shall on the like application also ascertain, in such manner as they may think proper, the total amount of fees and emoluments in criminal prosecutions received by such clerk of the peace or other officer during any year after the passing of this Act, and the said Commissioners are hereby authorised and empowered by warrant under their hands to award to such clerk of the peace or other officer the deficiency when and so often as the same shall occur between the last-mentioned amount and the annual average amount so ascertained as aforesaid, and the sum so awarded shall be paid out of any moneys which may be provided by Parliament for that purpose : Provided that in all cases where any such clerk of the peace, by reason of his being paid by salary under an order made by virtue of 14 & 15 Vict. c. 55, shall pay such fees and emoluments as aforesaid to the treasurer of the county or borough for which he is clerk of the peace in aid of the county or borough rate, as the case may be, such deficiency when so ascertained as aforesaid shall be paid to the treasurer of such county or borough respectively."

(*i*) They shall, subject to the provisions of this Act, transfer to the police account of the county fund a sum equal to one-half of the costs of the pay and clothing of the police of the county during the preceding year; and

One half the cost of the pay and clothing of the county police will be paid out of this fund.

(*j*) They shall, subject to the provisions of this Act, pay to the council of each borough maintaining a separate police force under the County and Borough Police Acts, one-half of the costs of the pay and clothing of the police of that borough during the preceding year; and

The County and Borough Police Act is the 19 & 20 Vict. c. 69 ; see sub-section (4), *post*. The reference to the provisions of this Act is to section 39, by which the separate police force in the smaller boroughs is abolished.

(*k*) They shall, if within their county sums are raised by rates for the purpose of the metropolitan police, pay to the

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Sub-s. 2 *k*.

receiver for the metropolitan police district in each year, a sum bearing such proportion to the sum actually raised in the same year by rates from the parishes in that county for the said purpose as a Secretary of State certifies to be the proportion which would have been contributed out of the Exchequer under the arrangement in force during the financial year next before the passing of this Act.

The Metropolitan Police Rate Act, 1868 (31 & 32 Vict. c. 67), section 2, provides that the annual sum to be provided in pursuance of the Acts relating to the metropolitan police force shall not exceed ninepence in the pound, calculated on the full annual value of all property rateable to the relief of the poor within the parishes and places comprised in the metropolitan police district, and of such annual sum to be so provided, one-fourth part shall be contributed by the Treasury out of moneys for that purpose provided by Parliament and three-fourth parts shall be raised by a rate in manner provided by the said Acts. By the Police Expenses Act, 1875, 38 & 39 Vict. c. 48, s. 2, so much of any Act as limits the amount authorised to be contributed by the Treasury out of moneys provided by Parliament towards the expenses of any police force in Great Britain to the particular amount or a particular proportion of any annual sum or charge specified in such Act, shall, during the continuance of the Act, be repealed. This Act is continued in force from year to year by the Expiring Laws Continuance Acts, and is now in force by virtue of 50 & 51 Vict. c. 63.

It will be observed that there is at present no limit to the amount which may be contributed by the Treasury.

The Acts relating to the expenses of the metropolitan police are 10 Geo. 4, c. 44 ; 2 & 3 Vict. c. 47 ; 19 & 20 Vict. c. 2 ; 20 & 21 Vict. c. 64 ; 24 & 25 Vict. c. 124 ; and the Acts above mentioned.

The boundaries of the metropolitan police district are fixed by the 10 Geo. 4, c. 44, and by Orders in Council made under 2 & 3 Vict. c. 47 ; and 3 & 4 Vict. c. 84. The district now comprises an area within about fifteen miles from Charing Cross.

(3) A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act, 1875, to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section.

The Public Health Act, 1875, ss. 189 and 191, are as follows :—

"Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer : Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors, and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.

"Subject in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board

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under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances as the urban authority may think proper ; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority, at their pleasure."

"A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner ; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

"The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts ; and the Local Government Board shall by order prescribe the mode of such appointment, and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities.

"Any district medical officer of a union may, with the sanction of the Local Government Board and subject to such conditions as the said board may prescribe, be appointed a medical officer of health ; and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.

"In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board."

(4) Where any payment towards the pay and clothing of the police of any town has been made in pursuance of section eighteen of the County and Borough Police Act, 1856, which authorises such payment to be made until the discontinuance of the police, the like payment shall, notwithstanding anything in this section, be made by the county council to the authority of such town until such discontinuance.

19 & 20 Vict. c. 69.

The 19 & 20 Vict. c. 69, s. 18, provides that "until the constables or watchmen appointed in and for any parish, town, or place under the 3 & 4 Wm. 4, c. 90, or under any local Act authorising the appointment of constables or watchmen, and authorising rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen, are discontinued as a separate force in manner provided by section 20 of the 3 & 4 Vict. c. 88, and by this Act, all the provisions of this Act applicable to the constables of any borough acting under the 5 & 6 Wm. 4, c. 76, shall be applicable to the constables or watchmen appointed under the 3 & 4 Wm. 4, c. 90, or under such local Act as aforesaid, in and for such parish, town, or place, and until such discontinuance, all the provisions of this Act applicable to the watch committee of a borough shall be applicable to the inspectors, commissioners, or other persons having the appointment of constables or watchmen in and for such parish, town, or place ; and the police of such parish, town, or place shall be visited and inquired into by the inspectors under this Act ; and the provision in this Act enabling the Commissioners of Her Majesty's Treasury to make payment towards the expenses of the police of a borough having a population exceeding 5,000, shall, until such discontinuance, extend to the police of such parish, town, or place as aforesaid having the like population."

(5) Where a sum is payable under this section to the guardians, authority, or officer of a union or other area, and such union or

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area is situate in more administrative counties than one, a proportionate part only of the sum otherwise payable shall be paid by the council of each of such counties to the guardians, authority, or officer, and the Local Government Board shall certify the proportionate part due from the council of each such county.

For the definition of "administrative county," see section 100, *post*. This provides for the numerous cases of unions and similar areas which extend into more than one county.

(6) The guardians, authority, or officer to whom a sum is payable under this section on the certificate of the Local Government Board, shall submit to the Board their claim to the payment in such manner, and produce such evidence and comply with such rules as the Board from time to time require or make, and the Board shall fix the amount due on the like principles, and may impose the like conditions for the payment thereof as before the passing of this Act.

(7) The Local Government Board may, if they think fit, vary a certificate granted for the purposes of this section, but, unless so varied, it shall be conclusive.

As to Secretary of State's power respecting efficiency of police.

25. (1) If a Secretary of State withholds, as respects the police of any county, his certificate under the County and Borough Police Act, 1856, that the police of the county has been maintained in a state of efficiency in point of numbers and discipline during the year ending on the twenty-ninth day of September then last past, the council of that county, in lieu of transferring any sum under the foregoing provisions of this Act to the police account of the county fund, shall forfeit to the Crown and shall pay into Her Majesty's Exchequer out of the county fund, and shall charge to the Exchequer Contribution Account of that fund, such sum as the Secretary of State certifies to be in his opinion equivalent to one half of the cost of the pay and clothing of the police of the county during the said year.

By the 19 & 20 Vict. c. 69, s. 15, Her Majesty is empowered to appoint inspectors whose duty it is to visit and inquire into the state and efficiency of the police appointed for every county and borough, and whether the provisions of the Acts under which the police are appointed are duly observed and carried into effect, and also into the state of the police stations, charge rooms, cells, or lock-ups, or other premises occupied for the use of the police; and each of such inspectors is to report to a Secretary of State, who is to cause the report to be laid before Parliament, and the inspectors are to be paid out of moneys provided by Parliament. By section 16, on the certificate of a Secretary of State that the police of any county or borough has been maintained in a state of efficiency in point of number and discipline for the year ending on the 29th September then last past, the Treasury may pay out of

moneys provided by Parliament such sum towards the expenses of the police as shall not exceed one-fourth of the charge for their pay and clothing (but such payment is not to extend to additional constables appointed under 3 & 4 Vict. c. 88, s. 19): Provided that before any certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector shall be sent to the justices or the watch committee, as the case may be, and in every case in which the certificate is withheld a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the justices or watch committee, shall be laid before Parliament. The proportion payable by the Treasury is not limited to one-fourth since the passing of 38 & 39 Vict. c. 48, s. 2, set out in the note to section 23, sub-section (2) (*k*), *ante*. The grant by the Treasury will cease after this Act comes into operation and will be replaced by the grant out of the Exchequer Contribution Account under section 24, sub-section (2), *ante*. In future, if the certificate is withheld, the grant is to be paid into the Exchequer (see section 27, *post*), instead of being placed to the credit of the police account.

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(2) If a Secretary of State withholds, as respects the police of any borough, his certificate under the County and Borough Police Act, 1856, that the police of the borough has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the twenty-ninth day of September then last past, no payment shall be made by the county council to the council of the borough in respect of one-half of the costs of the pay and clothing of the police of that borough during the said year, and such amount as a Secretary of State certifies to be in his opinion the equivalent of such one-half shall be transferred by the county council from the Exchequer Contribution Account to the general county account and applied to the general purposes of the county.

19 & 20 Vict. c. 96.

See the note to the preceding sub-section.

In this case if the certificate is withheld the grant is to be paid to the general county account, as to which see section 68, *post*.

Grant by county council towards costs of officers of union.

26. (1) After the thirty-first day of March next after the passing of this Act, every county council, other than the London County Council, shall grant to the guardians of every poor law union wholly or partly in their county, an annual sum for the costs of the officers of the union and of district schools to which the union contributes; and, until Parliament otherwise determine, the said annual sum shall be such sum as the Local Government Board certify to have been expended by the guardians of each poor law union during the financial year ending the twenty-fifth day of March next before the passing of this Act, on the salaries, remuneration, and superannuation allowances of the said officers (other than teachers in poor law schools), and on drugs and medical appliances.

The 31st March will be the end of the financial year. See section 73, *post*.

Sect. 26. NOTE SUB-S. 1.

The grant by the London County Council to the poor law unions is regulated by section 43, *post*.

The annual grant has hitherto been made out of moneys provided by Parliament. This grant during the present year will be made as provided by section 121, *post*.

Unions, or parishes not in unions, may be combined into school districts for the management of any class or classes of infant poor under the age of sixteen years chargeable to any such union or parish, who are orphans or deserted by their parents, or whose parents or surviving parent or guardians consent to the placing of such children in the school of the district. The Acts containing provisions relating to district schools are 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 82; 29 & 30 Vict. c. 113; 30 & 31 Vict. c. 106; 31 & 32 Vict. c. 122; 42 & 43 Vict. c. 54.

The amount of the grant will, until Parliament otherwise determine, be the sum certified to have been expended during the year ending 25th March, 1889.

The salaries, &c., of teachers in poor law schools are provided for by the grant out of the Exchequer Contribution Account under section 24, sub-section (2), *ante*.

The grant under this section will be paid out of the Exchequer Contribution Account as provided by section 23, sub-section (2), *ante*.

(2) Where a poor law union is situate in more counties than one, the payment under this section to the guardians of the union shall be borne by the counties in which each portion of such union is situate, in proportion to the rateable value of that portion, ascertained on such day as the Local Government Board may fix.

The rateable value is to be ascertained by the standard or basis of the county rate, or if there is no such standard then by the valuation lists; see section 100, *post*.

Supplemental provisions as to Local Taxation Account and Exchequer Contribution Account.

27. (1) Where a county council are required under the provisions of this or any other Act to pay any sum into Her Majesty's Exchequer, or to the Treasury, or to the receiver for the metropolitan police district, such sum shall be deducted from the amount payable under the provisions of this Act out of the Local Taxation Account to such county council, and instead of being paid to the county council, shall be paid into Her Majesty's Exchequer, or to the receiver for the metropolitan police district, as the case requires.

Sums are payable into the Exchequer under section 24, sub-section (2) (*c*), and under the preceding section.

The Treasury means the Commissioners of Her Majesty's Treasury. See section 100, *post*.

Sums are payable to the receiver of the metropolitan police district under section 24, sub-section (2) (*k*).

The text provides in effect that the total sum shall not be paid out of the Local Taxation Account and then partly repaid, but deducted in the first instance and paid directly to the Exchequer by the Commissioners of Inland Revenue.

(2) The account of the receipts and expenditure of the Local Taxation Account shall be audited as a public account by the

Comptroller and Auditor-General in accordance with such regulations as the Treasury may from time to time make. Sect. 27. Sub-s. 2.

The regulations here referred to have not yet been made.

(3) If at any time in any financial year the moneys standing to the Local Taxation Account are insufficient to meet such sums as the Local Government Board consider proper for the time being to pay thereout, the Local Government Board may borrow temporarily on the security of the said account and of moneys becoming payable thereto such sums as they require for the purpose of meeting such deficiency, and the Bank of England may lend such sums, but all sums so borrowed shall be repaid with the interest thereon during the same financial year out of moneys payable to the said account.

The Bank of England means the Governor and Company of the Bank of England. See section 100, *post*.

As to the financial year, see section 73, *post*.

General Provisions as to Transfer.

General provisions as to powers transferred to county council.

28. (1) The county council shall, as respects the business by this Act transferred to them from quarter sessions or the justices out of sessions, be subject to the provisions and limitations in this Act specified, but, save as aforesaid, shall have and be subject to all the powers, duties, and liabilities, which the quarter sessions, or any committee thereof, or any justice or justices had or were subject to in respect of the business so transferred.

The business here referred to is that transferred by sections 3, 4, 7, and 9, *ante*.

(2) The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act, either to any committee of the county council appointed in pursuance of this Act, or to any district council in this Act mentioned; the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays, and in respect of the execution as local authority of the Explosives Act, 1875, or of the Act relating to contagious diseases of animals. 38 & 39 Vict. c. 17.

Committees of the county council are appointed in pursuance of sections 81 82, *post*.

Sect. 28. NOTE SUB-S. 2. District councils are, as regards highways, the highway authorities, and as regards other matters sanitary authorities, urban and rural. See section 100, *post*.

The duties which may be delegated to justices are those transferred by section 7, *ante*, and the execution of the Explosives and Contagious Diseases (Animals) Acts. These duties must always be performed by local bodies. Certain transitory provisions as to committees for the execution of the Contagious Diseases (Animals) Acts are contained in section 112, *post*.

(3) Provided that the county council shall not under this section delegate any power of raising money by rate or loan.

As to the rates to be made by the county council, see section 3 (i.), *ante*.
As to borrowing by county councils, see section 69, *post*.

Summary proceeding for determination of questions as to transfer of powers.

29. If any question arises, or is about to arise, as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee under this Act, that question, without prejudice to any other mode of trying it, may, on the application of a chairman of quarter sessions, or of the county council, committee, or other local authority concerned, be submitted for decision to the High Court of Justice in such summary manner as, subject to any rules of court, may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

As to joint committees, see sections 46, 81, 82, *post*.
The rules of the High Court under this section have not yet been made.
The local authority here referred to is probably the local authority whose powers and duties are alleged to be or not to be transferred to the county council.

Standing joint committee of quarter sessions and county council for the purpose of police, clerk of the peace, officers, &c.

30. (1) For the purpose of the police, and the clerk of the peace, and of clerks of the justices, and joint officers, and of matters required to be determined jointly by the quarter sessions and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

The control of the county police is transferred to the standing joint committee by section 9, *ante*.
Clerks of the peace will in future be appointed by this committee under section 83, *post*.
This committee will fix and pay the salaries of justices' clerks under section 84, *post*.
As to joint officers, see section 118, *post*.

The committee will consist of an equal number of justices and members of the county council. If the number cannot be agreed upon it is to be determined by the Secretary of State. **Sect. 30.** NOTE SUB-S. 1.

(2) The joint committee shall elect a chairman, and, in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot.

There will be no casting vote in the election of the chairman. But it seems to follow from sections 81, 82, *post*, that the chairman, when elected, will have a casting vote.

(3) Any matter arising under this Act with respect to the police, or to the clerk of the peace, or to clerks of the justices, or to officers who serve both the quarter sessions or justices and the county council, or to the provision of accommodation for the quarter sessions or justices out of session or to the use by them or the police or the said clerks of any buildings, rooms, or premises, or to the application of the Local Stamp Act, 1869, to any sums received by clerks to justices, or with respect to anything incidental to the above-mentioned matters, and any other matter requiring to be determined jointly by the quarter sessions and county council, shall be referred to and determined by the joint committee under this section; and all such expenditure as the said joint committee determine to be required for the purposes of the matters above in this section mentioned, shall be paid out of the county fund, and the council of the county shall provide for such payment accordingly. 32 & 33 Vict. c. 49

As to the police, clerk of the peace, justices' clerk, and joint officers, see the sections of this Act referred to in note to sub-section (1), *ante*.

The Acts under which shire and county halls, assize courts, and judges' lodgings are provided and maintained are 7 Geo. 4, c. 63; 7 Will. 4, and 1 Vict. c. 24; 2 & 3 Vict. c. 69; 10 & 11 Vict. c. 38; and 35 & 36 Vict. c. 7. Buildings for petty sessions are provided under 12 & 13 Vict. c. 18, ss. 2, 3; 31 & 32 Vict. c. 22; 42 & 43 Vict. c. 49, ss. 20, 30; and 47 & 48 Vict. c. 43, s. 8. By the 13 & 14 Vict. c. 61, s. 24, any town hall, court house, or other public building belonging to any county, city, borough, or town may be used for the purposes of holding county courts without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting and cleaning when such building is used for the purposes of the courts, and for all other expenses necessarily incident to use of the said building for the purposes of the courts: Provided always that the necessary arrangement shall be made so that the sittings of the said courts shall not interfere with the business of the county, city, borough, or town usually transacted in such town hall, court house, or other public building, or with any purposes for which such town hall, court house, or other public building may be used by virtue of any local Act in that behalf: Provided also that this enactment shall not apply to any city, borough, or town in which a building has previously to the passing of this Act been erected for the purposes of holding the courts under the said Act and for the business connected with such courts, nor shall anything in this Act contained be held, deemed, or taken to prejudice, affect, or otherwise interfere with any lease, contract, agreement already entered into for the

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leasing, erection, hiring, or occupation of any building for the purposes of holding such courts therein and transacting therein the business relating to such courts.

As to the Local Stamp Act, 1869, see the note to section 3 (xiii.), *ante*, p. 9.

The fees and costs payable to justices' clerks are to be paid into the county fund, and the standing joint committee take the place of the quarter sessions and local authority in the enactments relating to the salaries and fees of justices' clerks. See section 84, *post*.

As to the county fund, see section 68, *post*.

PART II.

Application of Act to Boroughs, the Metropolis, and Certain Special Counties.

Application of Act to Boroughs.

Certain large boroughs named in the schedule to be county boroughs.

31. Each of the boroughs named in the Third Schedule to this Act being a borough which on the first day of June one thousand eight hundred and eighty-eight, either had a population of not less than fifty thousand, or was a county of itself shall, from and after the appointed day, be for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, and if a separate commission of assize, oyer and terminer, or gaol delivery is not directed to be executed within the borough, the borough shall, for the purposes of any such commission, and of the service of jurors, and the making of jury lists, be part of the county in which it is specified in the said schedule to be deemed for the purposes of this Act to be situate.

See the third schedule, *post*.

As to the appointed day, see section 109, *post*.

For the definition of the phrase "administrative county," see section 100, *post*.

"The purposes of this Act" as applied to county boroughs appear from section 34, *post*.

The principal Acts relating to the service of jurors and the jury lists are 6 Geo. 4, c. 50; 25 & 26 Vict. c. 107; 33 & 34 Vict. c. 77.

Adjustment of financial relations between counties and county boroughs.

32. (1) An equitable adjustment respecting the distribution of the proceeds of the local taxation licenses, and probate duty grant, and respecting all other financial relations, if any, between each county, and each county borough specified in the said schedule as being deemed for the purposes of this Act to be situate in that county, shall be made by agreement, within twelve months after

the appointed day, between the councils of each county and each borough, and in default of any such agreement, by the Commissioners appointed under this Act; and such adjustment shall provide, in the case of any expenses which may in future be incurred by the county wholly or partly on behalf of the borough for the liability of such borough to contribute, and save as provided by this Act, any existing liability to contribute or to incur expense shall, after the appointed day, cease, and an equitable provision for such cessation shall be made in the adjustment.

By section 33, *post*, county boroughs are entitled to receive a share from the local taxation account like other administrative counties. But as the amounts payable are to depend to some extent (see section 22, *ante*) upon the grants hitherto made to each county before the county boroughs were separated from it, this section provides for an equitable adjustment of the share of each county between that county, exclusive of the county boroughs within it and the county boroughs. This adjustment may be made by agreement, or failing agreement, by the Commissioners appointed under section 61, *post*.

The liabilities of the borough to contribute which are to continue are enumerated in sub-section (3).

(2) Where a county borough is specified in the said schedule as being deemed for the purposes of this Act to be situate in more than one county, the necessary adjustment shall be made between the counties.

(3) In such adjustment regard shall be had to the existing property, debts, and liabilities (if any) connected with the financial relations of the county and borough, and to the consideration that the county is not to be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs, and that a county borough is not to be placed in a worse financial position than it would have been in if it had remained part of the county and had shared in the division of the sums received by a county in respect of the license duties and the probate duty grant, as provided by this Act, and to the amount of benefit and value of the services which the borough receives in return for existing contributions, if any, and to all the circumstances of each case which it appears equitable to consider, subject nevertheless to the following provisions:—

(*a*) Where separate commissions of assize, oyer and terminer, and gaol delivery are not directed to be executed in a county borough, the borough council shall contribute a proper share of the costs of and incidental to the assizes of the county:

(*b*) If the borough is not at the passing of this Act a quarter sessions borough, the borough council shall contribute a

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proper share of the costs of and incidental to the quarter sessions and petty sessions of the county, and of and incidental to the coroners of the county or any franchise therein, and if a grant of a court of quarter sessions is hereafter made to the borough, the borough shall redeem the liability to such contribution, on such terms as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act:

(*c*) Where any portion of the costs of building and furnishing any county lunatic asylum has been contributed by a county borough, then, until a new arrangement is made between the county and borough councils, the borough council shall contribute in respect of the lunatic asylums for the time being of the county the like amount as would, if this Act had not passed, have been contributed by the borough; and the county council shall provide accommodation for and maintain pauper lunatics sent from the borough on the like terms as before the passing of this Act; and the borough council may, if they so desire, appoint to be members of the committee of visitors of any such asylum such number of members of the council as may be agreed upon, or in default of agreement be determined by the Commissioners under this Act, but such appointment shall be in substitution for any appointment made on the part of the borough under any existing law or arrangement. Any new arrangement may be made between the county council and all the borough councils concerned with respect to any such lunatic asylum, and if any such new arrangement is made, the borough and county councils may carry into effect any adjustment of property, debts, and liabilities which is the subject of such arrangement. If any council desires to make a new arrangement, and any or all of the other councils refuse to agree to the same, the matter shall be referred to the Commissioners under this Act, or, after they have ceased to hold office, to arbitration under this Act:

(*d*) Each county borough shall be liable for the maintenance of pauper lunatics in like manner as any other county.

The earlier part of this sub-section confers the widest possible discretion upon the persons entrusted with the making of the adjustment. It will be necessary to apportion between the county and the borough the existing pro-

perty, debts, and liabilities in which they have hitherto had a joint interest. But the chief difficulty will consist in the apportionment of the sums to be paid out of the local taxation account, so that, as far as possible, both the county and the borough shall be in the same position financially as hitherto. No attempt can be made to lay down general rules for guidance in making this adjustment.

The term "assizes" includes the Central Criminal Court. See section 100, *post*.

If the borough is not a quarter sessions borough it will, for the purpose of the appointment and jurisdiction of the coroner, form part of the county, subject, however, to the provisions of section 34, sub-sections (4), (5), *post*.

Arbitration under the Act is regulated by section 62, *post*, which also provides for the method by which a liability is to be redeemed.

A portion of the costs of building a county asylum may have been contributed by the borough under 16 & 17 Vict. c. 97; 18 & 19 Vict. c. 105; 19 & 20 Vict. c. 87; 26 & 27 Vict. c. 110; 28 & 29 Vict. c. 80, which will be found set out in *Archbold's Law of Lunacy*. The existing state of things under these Acts is to continue until a new arrangement is made and the property, debts, and liabilities adjusted, as stated in the text. As to the adaptation of the Lunacy Acts to the provisions of this Act, see section 86, *post*.

The county boroughs will be liable for the maintenance of pauper lunatics adjudged chargeable to them under 16 & 17 Vict. c. 97, s. 98, as to which see the note to section 24, sub-section (2) (*e*).

(4) In the adjustment of any financial relations other than the distribution of the proceeds of the licenses and probate duty grant, no borough wholly or partially exempt from contributing to any object shall be rendered liable so to contribute or to contribute in greater proportion than at present.

This sub-section has reference only to such contributions as are to continue under the preceding sub-section. All other liabilities are, by sub-section (1), to cease.

(5) The provisions of Part III. of this Act, with respect to the adjustment of property, income, debts, liabilities, and expenses, and to borrowing for the purpose, shall apply as if the Commissioners under this Act were the arbitrator in that Part mentioned.

This has the effect of applying to the Commissioners the powers of an arbitrator under section 62, *post*.

(6) Provided that at any time after the end of five years from the date of an agreement or award adjusting the financial relations of any county and borough, if the council of either the county or borough satisfy the Local Government Board that the adjustment has become inequitable, and that the councils are unable to agree on a new adjustment, the board shall appoint an arbitrator; and such arbitrator shall proceed to make a new equitable adjustment as if he were the Commissioners under this Act, and the provisions of this Act shall apply accordingly. Any new adjustment made by agreement, or by the award of an arbitrator under this section,

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may, after the expiration of five years from the date of such agreement or award, be altered either by agreement or by arbitration as above mentioned.

This sub-section cannot take effect until after the 13th August, 1893.

As to the powers of the arbitrator appointed under the sub-section, see section 62, *post*. The councils may agree on a new adjustment without appointing an arbitrator.

(7) Until any adjustment in pursuance of this section has come into operation, the county or borough council shall pay out of the county or borough fund to the borough or county council, as the case may be, the average annual amount which, during the three years next before the appointed day, has been expended by the county for the benefit of the borough, or contributed by the borough to the county, as the case may be, but any sum so paid shall be taken into account in the making of the adjustment, and the adjustment shall be made so as to take effect as from the appointed day.

In the meantime the county or borough, as the case may be, are to pay the average sum, but the amount actually paid is to be taken into account in making the adjustment.

As to the appointed day, see section 109, *post*.

(8) Any contribution by a county borough to the county in pursuance of this section shall be required and made in accordance with section one hundred and fifty-three of the Municipal Corporations Act, 1882, and that section, except so far as relates to the appointment of an arbitrator, shall apply in like manner as if every such borough were a quarter sessions borough situate in the county.

Section 153 of the Municipal Corporations Act, 1882, omitting sub-section (4), which relates to the appointment of an arbitrator, is as follows :—

"(1) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county, and having a separate court of quarter sessions, an account showing separately—

(*a*) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county ; and

(*b*) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received ;

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

"(2) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

"(3) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges." Sect. 32. Note Sub-s. 8.

(9) Expressions in this section relating to contributions by a borough to a county shall be construed to include any sum raised by the assessment of the parishes or hereditaments in the borough to the county rate.

33. (1) Nothing in this Act with respect to county boroughs shall prevent the continuance of one police force for any county borough and any county, or the consolidation of the police forces of any county borough and any county in like manner as heretofore, but where the provisions of this Act affect the arrangement with respect to the consolidated police force for a county and borough, an adjustment shall be made between the council of the borough and county in accordance with the provisions of this Act. The foregoing provisions of this section shall apply to boroughs which are not county boroughs in like manner as if they were re-enacted and in terms made applicable to those boroughs. Provisions as to police and rateable value in county boroughs.

The 3 & 4 Vict. c. 88, s. 14, enables boroughs to agree to consolidate their police with the county police, and by 19 & 20 Vict. c. 69, s. 5, the Queen in Council may arrange terms of consolidation on representations made by boroughs. The chief constable of the county has the general disposition and government of the consolidated police. An agreement for the consolidation of county and borough police cannot be terminated without the sanction of a Secretary of State; 19 & 20 Vict. c. 69, s. 20. The superannuation of the consolidated police is charged to the county superannuation fund under 22 & 23 Vict. c. 32, s. 17.

The provisions of the Act may affect an arrangement between a county and borough with reference to the sums to be contributed by each to the cost of the police under section 24, sub-section (2) (i.).

As to adjustment, see section 62, *post.*

(2) Where, for the purpose of calculating any contribution or payment to be made under this Act, it is necessary to ascertain the rateable value of both a county and a county borough, such rateable value shall be ascertained and fixed by a joint committee composed of representatives of all the councils concerned, and such committee shall, for that purpose, have all the powers and jurisdiction of quarter sessions and of a committee of justices appointed under the County Rate Act, 1852, and the Acts amending the 15 & 16 Vict. c. 81.

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same, and the number of representatives for the county and each county borough respectively shall be settled by agreement, or in default of agreement, by the Local Government Board.

Contributions and payments will have to be calculated under the preceding section and under section 62, *post*. The rateable value will be determined by a joint committee, who will have the same powers as a committee have under 15 & 16 Vict. c. 81, for the purpose of preparing a standard or basis for the county rate. It will be necessary, in fact, to prepare such standard or basis specially for the purposes of this sub-section.

Application of Act with modifications to county boroughs.

34. (1) The mayor, aldermen, and burgesses of each county borough acting by the council shall, subject as in this Act mentioned, have and be subject to all the powers, duties, and liabilities of a county council under this Act (in so far as they are not already in possession of or subject to the same), and in particular shall, subject to the provisions of this Act as to adjustment between counties and county boroughs, be entitled to receive the like sums out of the Local Taxation Account, and be bound to make the like payments in substitution for local grants and the like grants in respect of the costs of the officers of unions and of district schools as in the case of a county council, so far as the circumstances make such payments applicable, and all the provisions of this Act (including those with respect to the forfeiture on the withholding by a Secretary of State of his certificate as respects the police of the county) shall accordingly, so far as circumstances admit, apply in the case of every such borough, with the necessary modifications, and in particular with the following modifications:—

(*a*) The county borough shall be substituted for the county, and borough fund shall be substituted for county fund, and town clerk shall be substituted for clerk of the peace and clerk of the council:

(*b*) A reference to two or more counties shall include a reference to county boroughs as well as counties:

(*c*) Such powers, duties, and liabilities of the court of quarter sessions or justices as in the case of a county are transferred to the county council shall be transferred to the council of the county borough, whether the same are vested in or attached to the court of quarter sessions or justices of the borough or of the county in which the borough is situate:

(*d*) In the case of the duties collected by the Commissioners of Inland Revenue in respect of the licenses for trade carts,

locomotives, horses, mules, and horse dealers under any Act of the present session, those Commissioners shall certify the amount collected in each county in like manner as if the county included each county borough specified in the Third Schedule to this Act as deemed to be situate in that county, and the amount as so ascertained shall be divided between the said boroughs, and the residue of the said county in proportion to rateable value as fixed by the joint committee in pursuance of this Act, and until such value is fixed in proportion to rateable value according to the standard or basis for county contributions for the time being, and the share so ascertained shall be paid in like manner as if it had been collected in the county borough or in the residue of the county, as the case may be:

(*e*) Any sum standing to the Exchequer Contribution Account of a county borough which remains after payment of the grant required to be made in respect of the costs of union officers shall be carried to the borough fund, or be applied in aid of such rate leviable over the whole of the borough as the council may determine, and the provisions respecting the payment of the same to the general county account of the county fund, and the subsequent application and division thereof, shall not apply.

In many cases the business which has hitherto been administered by justices in or out of sessions, and which is now transferred to county councils, has been administered by the council of a borough as local authority. In such cases no transfer was necessary under this Act.

The provisions as to adjustment are contained in section 32, *ante*.

The sums to be received out of the Local Taxation Account are described in sections 20—22. The payments in substitution for local grants, &c., are contained in sections 24—26.

The forfeiture of the police grant is provided for by section 25, *ante*.

A reference to two or more counties is contained in section 24, sub-sect. (5), and section 26, sub-section (2).

The council of the borough, as county council, will have transferred to them all powers and duties transferred by Part I. of this Act, whether these have been exercised hitherto by the county or borough quarter sessions, or the county or borough justices.

The Act relating to licenses for trade carts, &c., is not yet passed. The Bill is entitled "The Excise Duties (Local Purposes) Bill," and stands for second reading on November 8th. The reference in this paragraph to the joint committee is explained apparently by section 33, sub-section (2), *ante*, the committee there mentioned being entrusted with the duty of ascertaining the relative rateable values of counties and county boroughs.

Paragraph (*e*) substitutes, so far as relates to county boroughs, a provision in lieu of section 23, sub-section (2) (iv.), *ante*, p. 37. The surplus is to be paid to the borough fund, or in aid of some rate leviable over the whole of the borough.

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(2) On the appointed day there shall be transferred to the mayor, aldermen, and burgesses of each county borough all such bridges and approaches thereto, or parts thereof, situate within the borough as were previously repairable by the county or any hundred therein, and the costs of the council in repairing such bridges and approaches, or parts thereof, and in repairing any roads in the borough which by virtue of this Act or any Act applied by this Act are main roads, shall be payable out of the borough fund.

This sub-section transfers to a county borough the liability to repair all bridges within its boundaries which were previously repairable as county or hundred bridges.

As to the liability of a borough to repair bridges, see the Municipal Corporations Act, 1882, section 119; also *Reg.* v. *Dorset* (*Inhabitants of*), 45 L. T. (N.S.) 308; *Reg. v. Southampton* (*No.* 1), 17 Q. B. D. 424; 55 L. J. M. C. 158; 55 L. T. (N.S.) 322; 35 W. R. 10; 50 J. P. 773; *Reg.* v. *Southampton* (*No.* 2), 19 Q. B. D. 590; 56 L. J. M. C. 112; 57 L. T. (N.S.) 261.

(3) The provisions of this Act with respect to—

(*a*) The constitution, election, proceedings, or position of the county council or the chairman thereof,

(*b*) The county treasurer, county surveyor, and other county officers,

(*c*) The standing joint committee of the justices and the council, or

(*d*) Coroners, or

(*e*) Gas meters, or

(*f*) The transfer to the council of powers relating to county and other rates, and the preparation or revision of the basis or standard for the county rate;

shall not apply to county boroughs, nor shall Part IV. of this Act relating to finance apply, save so far as is expressly provided in that Part.

The constitution, &c., of the council is provided for by the Municipal Corporations Act, 1882, the borough council in a county borough being also the county council.

The provisions of this Act as to county officers is inapplicable for the like reason, the appointment and duties of the borough officers being regulated by the Municipal Corporations Act, 1882.

The purposes for which a standing joint committee are appointed are in a borough administered by the borough council as such, or by the watch committee.

In a borough which has a separate quarter sessions, the coroner is appointed by the council under the Municipal Corporations Act, 1882, s. 171. In other boroughs the county coroner has jurisdiction, but the election of a coroner in a county borough which has not separate quarter sessions is specially provided for by sub-section (4) and (5), *post*. Section 5 of this Act is, therefore, inapplicable to county boroughs.

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The Acts relating to gas meters (as to which, see section 3 (xiii.), *ante*, p. 10), are in boroughs administered by the town councils, if they have adopted the Acts; but if they have not adopted the Acts, or if they are manufacturers or sellers of gas, the powers and duties under the Acts are exercised by the borough justices. If these powers and duties are not at present vested in the borough councils they are to remain in the borough justices.

As to the county and other rates, see section 3 (i.), *ante*, p. 4.

(4) Provided that where the district of any county coroner is wholly situate within a county borough, the coroner for that district shall be appointed by the council of that borough, and the writ for his election may be issued to that council instead of to the county council, and where the district of any county coroner is situate partly within and partly without a county borough, the writ for the election of such coroner shall be issued to the county council, but if there is a joint committee of the county and borough councils for the purpose, the question of the person to be elected shall be referred to that joint committee, and the county council shall appoint the person recommended by the majority of such committee.

This sub-section provides for the case where a county borough has not separate quarter sessions, and has not, therefore, a coroner of its own under section 171 of the Municipal Corporations Act, 1882. Where the district assigned to a county coroner is wholly within the borough, the writ, instead of being directed to the county council, under section 5, sub-section (1), *ante*, is to be directed to the borough council. When it is partly within the borough the writ is to be directed to the county council, who are to appoint the person recommended by a joint committee appointed under the next sub-section.

(5) If the council of a county borough so require, a joint committee shall from time to time be appointed for the purposes of coroners, consisting of such number of members of the county and borough councils as may be agreed upon, or in default of agreement may be determined by a Secretary of State.

See the note to the preceding sub-section.

(6) Nothing in this Act shall transfer to the council of any borough any power in relation to the division of the county into polling districts for the purpose of a parliamentary election for the county, the appointment of places of election for the county, the places of holding courts for the revision of the list of voters, and the costs of, and other matters to be done for, the registration of parliamentary voters for the county.

This power is in counties transferred from the quarter sessions to the county council by section 3 (xii.), *ante*, p. 9. The same powers as to dividing a municipal borough are vested in the borough council by 30 & 31 Vict. c. 102, s. 34; 31 & 32 Vict. c. 58, s. 18; 46 & 47 Vict. c. 51, s. 47, sub-sect. (3).

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(7) The powers and duties of the county authority under the Allotments Act, 1887, shall, as respects the borough, continue to be exercised and performed by the Local Government Board.

50 & 51 Vict. c. 48.

It is provided by the Allotments Act, 1887, 50 & 51 Vict. c. 48, s. 16, that for the purposes of that Act the county authority should be any representative body elected by the inhabitants of the county which might be established under any future Act, and until such representative body should be established, the powers and duties of the county authority should be exercised and performed by the Local Government Board. The county councils, therefore, are the county authorities under the Act, but this will not apply to county boroughs, in which the Local Government Board will continue to exercise jurisdiction as county authority.

45 & 46 Vict. c. 50.

(8) This Act and the Municipal Corporations Act, 1882, shall be construed so as to give effect to the provisions of this section.

The provisions of the Municipal Corporations Act, 1882, bearing on this section have been noticed in the notes.

Application of Act to larger quarter sessions boroughs not county counties.

35. In the case of a quarter sessions borough, not being one of the boroughs named in the Third Schedule to this Act, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, the following provisions shall, on and after the appointed day, apply:

(1) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act, and the parishes in the borough shall, subject to the exemptions hereinafter mentioned, be liable to be assessed to county contributions in like manner as the rest of the county.

It has already been pointed out in the note to section 34, sub-section (3), that in many cases where the local authorities for the execution of Acts were in counties the quarter sessions, in boroughs the local authorities under the same Acts were the borough councils. In these cases, while the powers of the quarter sessions are transferred to the county councils by this Act, the councils of the larger boroughs to which this section relates will, under the provision in the text, retain their powers as local authorities. In so far as the powers of the councils under the Municipal Corporations Act, 1882, are altered by this Act, the alterations are indicated in the notes to the incorporated sections of that Act, *post*. Subject, however, to the provisions of this section, the boroughs in question are, for the purposes of this Act, to form part of the county.

(2) Where such borough is at the passing of this Act exempt, in whole or in part, from contributing towards costs

incurred for any purposes for which the quarter sessions of the county in which the borough is situate are authorised to incur costs, the parishes in the borough shall not, save as in this Act expressly mentioned, be assessed by the county council to county contributions in respect of costs incurred for any such purpose, nor in the case of a partial exemption, be so assessed for any larger sum than such as will give effect to that exemption, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the justices of the borough, which will by virtue of this Act be exercised or discharged by the county council nor to any costs of or incidental to the assizes of the county.

This sub-section preserves existing exemptions from contributions to the county rate.

The powers, duties, and liabilities of the justices of the borough which are by this Act transferred to the county council, are those transferred by section 36, *post*.

As to the cost of the assizes, see sub-section (5), and section 100, *post*.

As to the mode of assessment, see section 100, *post*.

(3) Notwithstanding the last enactment the borough shall, for the purposes of the provisions of the Highways and Locomotives (Amendment) Act, 1878, respecting main roads, form part of the county, and the costs of maintaining, repairing, improving, enlarging, or otherwise dealing with any main road in the borough shall be paid out of the county fund, and the payment of the costs incurred in the execution of the provisions of this Act with respect to main roads shall be a general county purpose for which the parishes of the borough may be assessed to county contributions: 41 & 42 Vict. c. 77.

A borough having separate quarter sessions was not included in the definition of an urban authority under the Highway Act, 1878, and therefore the provisions of that Act as to main roads did not apply to such a borough. The boroughs mentioned in this section are now declared to be within the definition of urban sanitary authorities (see the next sub-section), and for the purposes of main roads they are to be deemed to be part of the county, and liable to be assessed like the rest of the county to county contributions.

For the definition of general county purposes, see section 68, *post*.

(4) Provided that—

(*a*) The borough shall be deemed to be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878; and the council of the borough shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of 41 & 42 Vict. c. 77.

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Sub-s. 4 *a*.

making bye-laws respecting locomotives, and authorising locomotives to be used on any road within the borough, save that if any difference is made by such bye-laws or authority between any main road maintained by the county council and the other roads in the borough, such authority and bye-laws shall require the approval of the county council; and

(*b*) The council of the borough shall have power as an urban authority to claim, in accordance with this Act, to retain the powers and duties of maintaining and repairing any main road in the borough; and

(*c*) The council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application and inquire whether such roads are or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse to make the declaration, the council of the borough may within a reasonable time after such refusal apply to the Local Government Board, and that Board shall have power, if after a local inquiry they think it just so to do, to make the said declaration, which shall have the same effect as if made by the county council.

See the note to the preceding sub-section.

The power to make bye-laws respecting locomotives, and authorising locomotives to be used on any road within the borough, is conferred by section 26 of the Highway Act as amended by this section. The saving in case of differences between the county bye-laws applicable to main roads maintained by the county council within the borough and the borough bye-laws, is obviously necessary to avoid an inconvenient or even absurd result. It is to be feared, however, that inconvenience will result from the differences in bye-laws of the county council and those of the borough council, when by reason of the borough itself maintaining its main roads, the approval of the county council is not necessary.

The power of an urban authority to claim to retain the maintenance of its main roads is conferred by section 11, sub-section (2), *ante*, p. 20.

As already stated, the provisions of the Act of 1878 as to main roads did not previously apply to these boroughs, and hence it is necessary to allow a period within which roads in the borough may be declared main roads under the Act. If the county council refuse the application, the borough may appeal to the Local Government Board. As to the local inquiry by that Board, see section 87, *post*.

(5) The payment of the costs of assizes and sessions shall be a general county purpose for which the parishes in the borough may be assessed to county contributions, and all costs of prosecutions mentioned in section one hundred and sixty-nine of the Municipal Corporations Act, 1882, shall be paid out of the county fund. **Sect. 35.** SUB-S. 5. 45 & 46 Vict. c. 50.

As to what is included in "the costs of assizes and sessions," see section 100, *post*.

Section 169 of the Municipal Corporations Act, 1882, is as follows:—"A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough."

As to the offences to which this section applies, see 7 Geo. 4, c. 64, ss. 22, 23; 14 & 15 Vict. c. 55, s. 2; 29 & 30 Vict. c. 52; 30 & 31 Vict. c. 35; 47 & 48 Vict. c. 70, s. 30 (*post*); 48 & 49 Vict. c. 69, s. 18.

(6) The county councillors elected for an electoral division consisting wholly of such borough, or of some part of such borough, shall not act or vote in respect of any question arising before the county council as regards matters involving expenditure on account of which the parishes in the borough are not, for the time being, liable to be assessed equally with the rest of the county to county contributions.

The councillors hereby disqualified from voting are those who represent a division consisting wholly of the borough, or wholly of part of the borough. The sub-section will not apply to councillors who represent a division consisting partly of the borough and partly of a county district exterior to the borough.

(7) The county council and the council of any such borough may agree for the cessation in whole or in part of any exemption under this section of the parishes in the borough from assessment to county contributions, in consideration either of payment by the county council of a capital sum, or of an annual payment, or of a transfer of property or liabilities, or of the county council undertaking in substitution for the council of the borough any powers or duties, or partly for one consideration and partly for another, or in any other manner, according as may be determined.

The consideration for the agreement may be all or any of the matters herein stated, or any other consideration which the councils in their discretion may deem adequate. On the cessation of the exemption the parishes in the borough

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will become liable to be assessed to county contributions in respect of the costs incurred for the purpose, from contributing to which they were previously exempt.

(8) A borough which is a county of a city or a county of a town shall, for the purposes of this section, be deemed to be situate in and form part of the county which it adjoins, or if it adjoins more than one county, then in and of the county of which it forms part for the purposes of parliamentary elections.

A borough which is not a county of a city or county of a town will, of course, for the purposes of this section be deemed to form part of the county in which it is geographically situate.

General application of Act to boroughs with separate commission of the peace.

36. (1) Where a borough has a separate commission of the peace, whether a quarter sessions borough or not (and is not a borough named in the Third Schedule to this Act), then, subject to the provisions of this Act, all such powers, duties, and liabilities of the court of quarter sessions or justices of the borough, as in the case of the county are by this Act transferred to the county council, shall cease, and the county council shall have those powers, duties, and liabilities within the area of the borough in like manner as in the rest of the county;

This section applies to all boroughs which have a separate commission of the peace, other than county boroughs, whether they have separate quarter sessions or not, and without regard to their population.

This section provides that such powers of the borough quarter sessions or justices as would, in a county, be transferred to the county council, shall in these boroughs be transferred to the county councils so that for these purposes the county councils will supersede the borough sessions or justices within the area of the borough. As to the costs incurred for these purposes, see section 35, sub-section (2), *ante*.

(2) Provided that such powers, duties, or liabilities, so far as they are under the Acts relating to pauper lunatics, shall, save as otherwise provided by this Act, be transferred to the council of the borough and not to the county council, and the provisions of this Act with respect to the transfer to a county council shall apply with the necessary modifications to such transfer to the council of the borough.

This sub-section contains an exception to the preceding one. The transfer of the powers of the borough sessions or justices under the Acts relating to pauper lunatics is to the borough council, not to the county council.

As to the adaptation of the Acts relating to lunatic asylums, see section 86, *post*.

Observe that this clause relates only to *pauper* lunatics. This Act does not in any way interfere with the powers and duties of justices in relation to private lunatic asylums.

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The expression "save as otherwise provided by this Act," has reference to the provisions in section 38, sub-section (1). *post*, whereby in the smaller quarter sessions boroughs the powers, &c., of the borough justices relating to pauper lunatic asylums are transferred to the county councils.

Application of Act to quarter sessions boroughs hereafter created.

37. The grant after the passing of this Act of a court of quarter sessions to any borough not being a county borough, shall not affect the powers, duties, or liabilities of the county council as respects the area of that borough, nor exempt the parishes in the borough from being assessed to county contributions for any purpose to which such parishes were previously liable to be assessed, and shall not confer or impose on the mayor, aldermen, and burgesses, or the council of such borough, any powers, duties, or liabilities further than such as are necessary for establishing and maintaining the court of quarter sessions in the borough.

The effect of this section is that the grant of separate quarter sessions will not in future affect the position of a borough under this Act, so far as relates to county councils and county contributions.

In the case of a grant of quarter sessions to a county borough which has not at present separate quarter sessions, the borough is to redeem its liability to contribute a share of the costs of quarter sessions and coroners. See section 32, sub-section (3), *ante*, p. 54.

Application of Act to smaller quarter sessions boroughs with population under 10,000.

38. Where a borough having a separate court of quarter sessions contained according to the Census of one thousand eight hundred and eighty-one a population of less than ten thousand, the following provisions shall after the appointed day apply :—

(1) There shall be transferred to the county council the powers, duties, and liabilities of the council and justices of the borough as regards the provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics ;

These powers, duties, and liabilities are similar to those transferred from the quarter sessions in counties under section 3 (vi.), *ante*, p. 6. As to the larger quarter sessions, see section 36, sub-section (1), *ante*, p. 66.

(2) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(*a*) as regards coroners ; and

(*b*) as regards the appointment of analysts under the Acts relating to the sale of food and drugs ; and

(*c*) under the Acts relating to—

(i.) reformatory and industrial schools ; and

(ii.) fish conservancy ; and

(iii.) explosives ; and

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(*d*) under the Highways and Locomotives (Amendment) Act, 1878;

Provided that the transfer by this section—

(*a*) Shall be subject to the provisions in this Act for the protection of existing officers and the continuance of existing contracts; and

(*b*) Shall not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882:

In a quarter sessions borough the coroner has hitherto been appointed by the council of the borough, under section 171 of the Municipal Corporations Act, 1882. In the boroughs to which this section relates this power will cease, save that the existing coroners will continue in office unless their office is abolished, in which case they will be entitled to compensation under sections 119, 120, *post*. The area of these boroughs will, for the purposes of the coroners, become part of the counties. (See sub-section (5), *post*.)

Analysts have hitherto been appointed in boroughs having separate courts of quarter sessions by the councils of such boroughs (38 & 39 Vict. c. 63, s. 10). This power of appointment will remain with the town councils of the larger quarter sessions boroughs, under section 35, *ante*. In the smaller quarter sessions boroughs the power will pass to the county councils, subject to the proviso in this sub-section.

Under the Reformatory and Industrial Schools Acts the councils of boroughs had certain powers as prison authorities similar to those of justices in quarter sessions in counties, as to which see section 3 (vii.), *ante*, p. 6.

As to the Acts relating to fish conservancy, see section 3 (xiii.), *ante*, p. 9.

Under the Explosives Act, 1875, the local authority in a borough not assessed to the county rate were the council of the borough (section 67), and in boroughs so assessed the council might become a local authority by order of a Secretary of State (section 68). The powers and duties of the town councils in the smaller quarter sessions boroughs will now pass to the county councils.

As to the Highway Act, 1878, compare the provisions of section 35, sub-section (4), *ante*, p. 63, and see the notes to that section. See also sub-sections (3) and (4), *infra*.

The provisions of this Act as to existing officers and as to the continuance of existing contracts are contained in sections 118, 120, and sections 122, 125, *post*.

41 & 42 Vict. c. 77.

(3) The borough shall be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878:

See the notes to section 35, sub-sections (3) and (4), *ante*, p. 63.

(4) The council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to be main roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application, and inquire whether such roads are, or ought to be,

main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse the declaration, the council of the borough may, within a reasonable time after such refusal, apply to the Local Government Board, and that Board, after a local inquiry, shall have power, if they think it just so to do, to make the said declaration, which shall have the same effect as if it had been made by the county council.

This sub-section is identical with section 35, sub-section (4) (*c*), which see, *ante*, p. 64.

(5) The area of the borough shall, for the purposes of the above-mentioned Acts, and all other administrative purposes of the county council, be included in the county as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions:

See the note to sub-section (1) as to coroners, *supra*. The borough is to be liable to be assessed to all county contributions.

(6) Any property, debts, or liabilities of the county or of any borough affected by this or the next succeeding section (including the charge to be made for lunatics which but for this Act would have been maintainable by the borough) may be adjusted in manner provided by Part Three of this Act:

The provisions of this Act as to adjustment are contained in section 62, *post*.

As to lunatics maintainable by the borough, see the note to section 24, sub-section (2) (*g*), *ante*, p. 42. The lunatics in question will now be chargeable to the county.

(7) It shall be lawful for Her Majesty the Queen, on petition from the council of any borough to which this or the next succeeding section applies, by Order in Council, to revoke the grant of a court of quarter sessions to the borough, and by letters patent to revoke the grant of a commission of the peace for the borough, and to make such provision as to Her Majesty seems proper for the protection of interests existing at the date of the revocation, and after the date of the revocation all enactments

Sect. 38. Sub-s. 7.

and laws relating to courts of quarter sessions and justices and their jurisdiction shall apply as if such court of quarter sessions or commission of the peace, as the case may be, did not exist:

This is a novel provision. It remains to be seen whether it will be put into effect. If it is put into effect the office of recorder of the borough will be abolished, but he will be entitled to compensation under section 120, *post*.

(8) A borough which is a county of a city or a county of a town shall, for the purposes of this and the next succeeding section, and if Her Majesty revokes the grant of a court of quarter sessions or a commission of the peace to such borough, then also for all purposes of quarter sessions and justices, be deemed to be situate in and form part of the county of which it forms part for the purpose of parliamentary elections:

Compare the somewhat similar provisions of section 35, sub-section (8), *ante*, and see the notes to that sub-section. In the case of a revocation of a grant of quarter sessions to the borough, the county justices would exercise concurrent jurisdiction with the borough justices. See the Municipal Corporations Act, 1882, section 154, and *Reigate* (*Mayor of*) v. *Hart*, L. R. 3 Q. B. 244; 32 J. P. 342.

(9) Where this section applies to a cinque port it shall apply also to all the members thereof, and those members when not situate in a quarter sessions borough shall form part of the county for all purposes.

As to the Cinque Ports, see the note to section 48, *post*.

Application of Act to all boroughs with population under 10,000.

39. (1) Where a borough, whether with or without a separate court of quarter sessions, contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, then after the appointed day all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

(*a*) to the police force of the borough, or

(*b*) to the appointment of analysts under the Acts relating to the sale of food and drugs, or

41 & 42 Vict. c. 74. 47 & 48 Vict. cc. 13, 47. 49 & 50 Vict. c. 32. 40 & 41 Vict. c. 68.

(*c*) to the execution of the Contagious Diseases (Animals) Acts, 1878 to 1886, or the Destructive Insects Act, 1877, or

(*d*) to gas meters, or

(*e*) to weights and measures, if the council exercise any jurisdiction in relation thereto,

shall cease, and, subject to the provisions of this Act as to the members of the police force holding office on the said day, the

area of the borough shall for all purposes of the Acts relating to the county police force, or other matters above in this section mentioned, form part of the county in like manner as if it were not a borough. Sect. 39. Sub-s. 1.

This section applies to all boroughs having a population of less than 10,000, whether they have separate quarter sessions or not. To these boroughs sub-sections (6) and (8) of the preceding section are made expressly applicable.

The police force of the borough will cease to exist as a separate force, and the existing borough constables will become county constables as provided by sections 118, 119, *post*. This provision as to police repeals that part of the Municipal Corporations Act, 1882, relating to borough police, so far as relates to these smaller boroughs.

It has been shown in the notes to the last section that analysts were appointed in quarter sessions boroughs under 38 & 39 Vict. c. 63, s. 10, by the borough councils. In boroughs which had no separate quarter sessions, but had a separate police force, the town councils had a similar power of appointment. As the separate police force will cease to exist in these smaller boroughs, the power to appoint analysts is to cease also.

Under the Contagious Diseases (Animals) Act, town councils in municipal boroughs were the local authorities. They continue to be such local authorities in the larger quarter sessions boroughs, under section 35, *ante*, but in all other boroughs their power is to cease, and be transferred to the county councils as in the county at large, subject, however, to sub-section (2), *post*.

As to the jurisdiction of a borough council under the Acts relating to gas meters, see the note to section 34, sub-section (3), *ante*, p. 61.

Under the Weights and Measures Act, 1878, the borough councils were the local authorities in boroughs which had separate quarter sessions. In boroughs not having separate quarter sessions they were the local authorities only if they so resolved, or if in 1878 they possessed separate local standards (41 & 42 Vict. c. 49, s. 50). All powers of borough councils will now cease under this Act in the smaller boroughs.

The provisions of this Act, as to members of the police force holding office on the appointed day, are contained in sections 118, 119, *post*.

(2) Provided that nothing in this section shall transfer to the county council any powers, duties, or liabilities under section thirty-four of the Contagious Diseases (Animals) Act, 1878, as amended by section nine of the Contagious Diseases (Animals) Act, 1886. 41 & 42 Vict. c. 74. 49 & 50 Vict. c. 32.

The provisions of the Contagious Diseases (Animals) Act, 1886, are contained in *Lumley's Public Health*, p. 551. By that Act the powers of local authorities under the Contagious Diseases (Animals) Acts and Orders, as amended by that Act, applying to dairies and milkshops, are vested in sanitary authorities. The powers of a borough council, as urban authority under that Act, are preserved by this sub-section.

(3) The urban authority for any borough or town with such population as above in this section mentioned shall cease to be the local authority under the Acts relating to explosives, and the county council shall have the like authority under the said Acts in the said borough or town as they have in the rest of the county.

The word "town" is not defined by this Act. It refers probably to improvement districts in which, by section 68 of the Explosive Act, 1875, the

Sect. 39. Commissioners might, by order of the Secretary of State, become the local authority in like manner as the council of a borough assessed to the county rate, as to which see the note to section 38, sub-section (2), *ante*, p. 68. The powers of such Commissioners will henceforth cease.

NOTE SUB-S. 3.

Application of Act to Metropolis.

Application of Act to Metropolis as county of London.

40. In the application of this Act to the Metropolis, the following provisions shall have effect:—

(1) The Metropolis shall, on and after the appointed day, be an administrative county for the purposes of this Act by the name of the administrative county of London.

For the definition of "the Metropolis," see section 100, *post*. The term "administrative county" is defined by the same section. It will be seen by the next sub-section that the county of London is to be a separate county for all purposes.

The appointed day is defined by section 109, *post*.

(2) Such portion of the administrative county of London as forms part of the counties of Middlesex, Surrey, and Kent, shall on and after the appointed day be severed from those counties, and form a separate county for all non-administrative purposes by the name of the county of London; and it shall be lawful for Her Majesty the Queen to appoint a sheriff of that county, and to grant a commission of the peace and court of quarter sessions to that county; and, subject to the provisions of this Act, all enactments, laws, and usages with respect to counties in England and Wales, and to sheriffs, justices, and quarter sessions shall, so far as circumstances admit, apply to the county of London:

The county of London is to be a separate county for all purposes, with a sheriff, quarter sessions, and commission of the peace for itself.

Attention should here be directed to the transitory provisions as to sheriffs, coroners, &c., in sections 113, 117, *post*.

(3) Provided that, for the purpose of the jurisdiction of the justices under such commission, and of such court, as well as other non-administrative purposes, the county of the city of London shall continue a separate county, but if and when the mayor, commonalty, and citizens of the city assent to jurisdiction being conferred therein on such justices and court may by commission under the Great Seal be made subject to the jurisdiction thereof.

The city of London will be part of the administrative county of London for the purposes of this Act. For non-administrative purposes it will be a separate county until the event mentioned in the text.

(4) The number of the county councillors for the administrative county of London shall be double the number of members which, at the passing of this Act, the parliamentary boroughs in the metropolis are authorised by law to return to serve in Parliament; and each such borough, or, if it is divided into divisions, each division thereof shall be an electoral division for the purposes of this Act, and the number of county councillors elected for each such electoral division shall be double the number of members of Parliament which such borough or division is, at the passing of this Act, entitled to return to serve in Parliament:

The number of councillors in the county of London is thus fixed by the Act itself, and not by the Local Government Board, under section 2, sub-section 3, *ante*. In like manner the electoral divisions are fixed, and consist of the parliamentary divisions.

(5) Provided that the number of county aldermen in the administrative county of London shall not exceed one-sixth of the whole number of county councillors.

In other counties the number of aldermen will be one-third of the council. See section 14 of the Municipal Corporations Act, 1882, *post*.

(6) The provisions of this Act with respect to the powers, duties, and liabilities of county councils, and the transfer of property, debts, and liabilities of counties to county councils, shall apply to the administrative county of London in like manner, so nearly as circumstances admit, as if the quarter sessions, justices, and clerks of the peace of the counties of Middlesex, Surrey, and Kent had been, so far as regards the Metropolis, the quarter sessions, justices, and clerk of the peace for the administrative county of London:

This provision applies in effect to the first part of this Act so far as regards the transfer to the county councils from quarter sessions and justices, and the transfer of property under Part IV.

(7) Provided that any property, debts, or liabilities of the county of Kent shall not, by reason only of this enactment, be vested in the county council of London, but such property, debts, and liabilities, and also the property, debts, and liabilities of the counties of Middlesex and Surrey, shall be apportioned between the portions of those counties situate within the Metropolis and the portions situate outside the Metropolis in such manner as

Sect. 40. Sub-s. 7.

may be determined by agreement between the respective county councils, or in default of agreement by the Commissioners under this Act, and the property, debts, and liabilities apportioned to the portions within the Metropolis shall be the property, debts, and liabilities of the whole of the administrative county of London.

As to the Commissioners under this Act, see section 61, *post*.

(8) There shall also be transferred to the London county council the powers, duties, and liabilities of the Metropolitan Board of Works, and after the appointed day that Board shall cease to exist, and the property, debts, and liabilities thereof shall be transferred to the London county council, and that council shall be in law the successors of the Metropolitan Board of Works.

The Metropolitan Board of Works had not only extensive powers in the metropolis as to drainage, streets, open spaces, bridges, &c., but were the local authority for the execution of numerous Acts in the metropolis, such as the Artizans Dwellings Acts, the Contagious Diseases (Animals) Acts, &c. The provisions of the several statutes relating to the powers, duties, and liabilities hereby transferred are too numerous for insertion here. Reference may be made to *Woolrych's Metropolis Management Acts*, and to the Index to the Statutes for full information as to these statutes.

(9) If the London county council borrow for the purposes of this Act they shall borrow in accordance with the provisions of the Acts relating to the Metropolitan Board of Works, but save as aforesaid Part Four of this Act shall apply to the London county council when acting as successors of the Metropolitan Board of Works, and the costs incurred when so acting shall be paid out of the county fund, and the payment thereof shall be a general county purpose.

The borrowing powers of the Metropolitan Board of Works are regulated by 32 & 33 Vict. c. 102; 33 & 34 Vict. c. 24; 34 & 35 Vict. c. 47; 38 & 39 Vict. c. 65; 40 & 41 Vict. c. 52; 44 & 45 Vict. c. 48; 45 & 46 Vict. c. 33; 46 & 47 Vict. c. 27; 47 & 48 Vict. c. 50; 48 & 49 Vict. c. 50; 49 & 50 Vict. c. 44; 50 & 51 Vict. c. 31; 51 & 52 Vict. c. 40.

Position of city of London, and application of Highway Acts.

41. (1) Of the powers, duties, and liabilities of the court of quarter sessions and justices of the city of London—

(*a*) Such of them as would, if the city were a quarter sessions borough, with a population exceeding ten thousand, be exercised by virtue of this or any other Act by the council of the borough, shall be transferred to the mayor, commonalty, and citizens of the city acting by the council (in this Act referred to as the common council); and

(*b*) Such of them as would, in the said case, be by virtue of this Act exercised and discharged by the county council shall cease, and the county council shall, subject to the provisions of this Act, have those powers, duties, and liabilities within the city of London in like manner as within the rest of the administrative county of London.

As to the definition of the quarter sessions of the City of London, see section 100, *post*.

Under this sub-section such powers as would, if the city were a quarter sessions borough under sections 35, 36, be exercised by the council, will be exercised by the common council. Such other powers of the quarter sessions and justices as would, under sections 35, 36, be transferred to a county council, shall be transferred to the London county council.

(2) The provisions of this Act with respect to the transfer to a county council shall apply with the necessary modifications to such transfer to the common council, and the common council shall be entitled to receive from the London county council in respect of each pauper lunatic, the same amount as is required by this Act to be paid by any other county council to the council of a borough.

The amount required to be paid for each pauper lunatic is that provided by section 24, sub-section (2) (*g*).

(3) Where at the passing of this Act the Metropolitan Board of Works or the quarter sessions of Middlesex are authorised to incur costs for any purpose, and the common council of the city are not liable to contribute to such costs, the parishes in the city of London shall not, save as in this Act expressly mentioned, be liable to be assessed to county contributions in respect of costs incurred by the county council for such purpose, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the quarter sessions or justices of the city of London, which will be exercised and discharged by the London county council.

This continues existing exemptions of the city. As to the cost of quarter sessions, see sub-section (5), *infra*.

(4) The provisions of the Highways and Locomotives (Amendment) Act, 1878, with respect to main roads, as amended by this Act, shall extend to the Metropolis in like manner as if the expression "urban sanitary district" in that Act included, as respects the Metropolis, the city of London, and a parish in Schedule A., and a district in Schedule B. of the Metropolis Management Act, 1855, as amended by subsequent Acts, and as if the Commissioners of

41 & 42 Vict. c. 77

18 & 19 Vict. c. 120.

Sect. 41. Sub-s. 4.

Sewers, or vestry, or district board (as the case may be) were the urban sanitary authority: Provided that—

(*a*) In the city of London the common council shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making bye-laws respecting locomotives, and authorising locomotives to be used on any road within the city, save that if any difference is made by such bye-laws or authority between any main road maintained by the county council and the other roads in the city, such authority and bye-laws shall require the approval of the county council; and

(*b*) The common council in the city of London, and in any other part of the metropolis the vestry, or district board, shall be deemed to be a district council and an urban authority within the meaning of the provisions of this Act with respect to main roads, and may accordingly claim to retain the power of maintaining and repairing a main road, and in such case shall have all such powers and duties of maintaining, repairing, improving and enlarging, and otherwise dealing with the main road as they would have if it were an ordinary highway repairable by them, and such powers and duties shall in the city of London be discharged by the Commissioners of Sewers.

This sub-section down to the end of the first paragraph is similar to that contained in section 35, which provides for the larger quarter sessions boroughs. The county council for London will exercise the general powers of a county authority in the metropolis. See section 3 (viii.), *ante*, p. 7.

In the city the common council will make bye-laws as to locomotives. The saving to this provision is similar to that contained in section 35, sub-section (4).

The provisions of this Act as to main roads are contained in section 11, *ante*, p. 17.

(5) The payment of the costs of assizes and sessions shall be a general county purpose for which the parishes in the city may be assessed to county contributions, and all such costs of prosecutions in the city as are by law payable out of the county rate shall be paid out of the county fund.

As to what is included in the "costs of assizes and sessions," see section 100, *post*.

As to the prosecutions, the costs of which are payable out of the county rate, see the statutes mentioned in the note to section 35, sub-section (5), *ante*, p. 65.

(6) The county councillors elected for the city, shall not act or vote in respect of any question arising before the county council

as regards matters involving expenditure on account of which the parishes in the city are not for the time being liable to be assessed equally with the rest of the administrative county to county contributions.

Compare the similar provisions of section 35, sub-section (6), *ante*, p. 65.

(7) The London county council, and the common council of the city of London, may agree for the cessation in whole or in part of any exemption under this section from assessment, in consideration either of payment by the county council of a capital sum, or of an annual payment, or of a transfer of property or liabilities, or of the county council undertaking, in substitution for the common council, any powers or duties, or partly for one consideration and partly for another, or in any other manner, according as may be determined.

This sub-section is identical with section 35, sub-section (7), *ante*, p. 65.

(8) The sheriffs of the city of London shall not have any authority except in the city.

As to the sheriff of Middlesex, see section 46, sub-section (6), *post*; and as to the first sheriffs in London and Middlesex, see section 113, *post*.

Arrangements for paid chairman and sitting of quarter sessions for London.

42. (1) If the London county council petitions Her Majesty the Queen in that behalf, it shall be lawful for Her Majesty from time to time to appoint a barrister of not less than ten years' standing to be paid chairman or deputy chairman, or one of the paid deputy chairmen, as the case may be, of the quarter sessions for the county of London.

This sub-section applies to a paid chairman or deputy-chairman of quarter sessions. As to the first chairman, see section 117, sub-section (5), *post*.

As to the appointment of a paid deputy chairman of the London county council, see section 88, *post*.

(2) Any person so appointed shall hold office during good behaviour, and shall by virtue of his office be a justice of the peace for the county of London.

(3) There shall be paid to him out of the county fund as a general county purpose such yearly salary not exceeding that stated in the petition in consequence of which the appointment was made, as Her Majesty directs.

As to general county purposes, see section 68, *post*.

(4) Such chairman or deputy chairman shall not, during his office, be eligible to serve in Parliament, and shall not during his continuance in office practise as a barrister.

Sect. 42. Sub-s. 5.

(5) Where there is any such paid chairman or deputy chairman of the quarter sessions, the court may be held before such chairman or deputy chairman alone.

(6) Separate courts of quarter sessions may be held at different parts of the county of London at the same time if so directed by the county council with the approval of a Secretary of State, and every court of general sessions of the peace for the county of London and every adjournment thereof shall have the same jurisdiction in all respects, including the power of hearing and determining appeals, as if such court were quarter sessions.

(7) The London county council may from time to time submit to a Secretary of State a scheme for regulating the holding of courts of quarter sessions in London either at any one place or at different places, and in the latter case either at the same time or at different times, and for determining the legal character of each sessions so held, that is to say, whether quarter, general, original, or adjourned sessions, or otherwise, and for making such regulations respecting committals for trial, recognisances, depositions, and other matters as are necessary or proper for giving effect to the scheme, and such scheme, when approved by a Secretary of State, shall be published in the *London Gazette*, and thereupon shall have effect as if it were enacted in this Act.

Certain transitory provisions as to places for holding quarter sessions in the county of London are contained in section 116, *post*.

(8) Until the quarter sessions for the county of London constitute special sessional divisions, every petty sessional division of the counties of Middlesex, Surrey, and Kent existing at the appointed day, or so much of such division as is situate in the county of London, shall form a special or petty sessional division of the county of London.

(9) Where any special or petty sessional division of the counties of Middlesex, Surrey, and Kent, existing at the appointed day, is situate partly within and partly without the county of London, so much thereof as is situate without the said county shall, until any alteration is made by the quarter sessions for the county of Middlesex, Surrey, or Kent, as the case may be, be a special or petty sessional division of that county.

(10) The quarter sessions for the county of London shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869, and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area.

32 & 33 Vict. c. 67.

Upon the hearing of any appeals in relation to property in the city of London, such two members of the court of quarter sessions of the city of London as may be appointed by that court for the purpose, shall be entitled to attend and sit as members of the quarter sessions for the county of London. Sect. 42. Sub-s. 10.

The general assessment sessions will therefore cease to exist. The London quarter sessions will exercise the jurisdiction of that court within the same area, *i.e.*, in all unions or parishes not in unions wholly or for the greater part in value situate within the jurisdiction of the Metropolitan Board of Works under the 18 & 19 Vict. c. 120.

The concluding part of this sub-section provides for the representation of the city of London, having regard to the fact that the city may not be within the jurisdiction of the London quarter sessions. See section 40, sub-section (3), *ante*, p. 72.

(11) The enactments respecting the times for holding sessions of the peace for the county of Middlesex, and the appointment and payment of any assistant judge or deputy assistant judge, or of a person to preside in a second court at any sessions in the county of Middlesex, shall cease to apply to the county of Middlesex. 7 & 8 Vict. c. 71. 22 & 23 Vict. c. 4. 37 & 38 Vict. c. 7.

As to the times for holding sessions in future, see sub-sections (6) and (7) and section 116, *post*.

The assistant judge is to be the first chairman of the London quarter sessions. See section 117, sub-section (5), *post*. As to the appointment of deputy chairmen, see sub-section (1), *ante*.

(12) Quarter sessions for the counties of Middlesex, Surrey, and Kent respectively may be held, and the justices of each of those counties may hold special and petty sessions for any division of such county, and appoint a petty sessional or occasional court house, at any place in the county of London, and for all purposes relating to such sessions or any business transacted at such court house, such place shall be deemed to be within the county and division for which the justices holding the same are justices, but no jurors shall be summoned for such sessions from within the county of London.

As to the appointment of petty sessional and occasional court houses, see 42 & 43 Vict. c. 49, s. 20; 47 & 48 Vict. c. 43, s. 8.

As to the summoning of jurors for quarter sessions, see 6 Geo. 4, c. 50, s. 13; 1 Vict. c. 4.

(13) Nothing in this Act shall alter the powers or duties of the justices, quarter sessions, recorder, or common serjeant of the city of London, further or otherwise than is expressly provided or than the powers and duties of the justices or quarter sessions of any county are altered.

See section 40, sub-section (3), and section 41, *ante*.

Sect. 42. Sub-s. 14.

(14) Provided that from and after the appointed day the rights claimed by the court of common council to appoint to the offices of common serjeant, and judge of the City of London Court shall cease, and in any future vacancy in each of the said offices it shall be lawful for Her Majesty the Queen to appoint a duly qualified barrister to be such common serjeant or judge; and from and after the next vacancy no recorder shall exercise any judicial functions unless he is appointed by Her Majesty to exercise such functions.

As to the definition of the appointed day, see section 109, *post*.

These officers have hitherto been appointed by the common council. In future only the recorder will be appointed by that body, and he will not be able to exercise any judicial functions unless so appointed by the Crown.

Grant by London county council to poor law unions.

43. (1) In the administrative county of London the county council:—

(*a*) Shall pay to the guardians for every poor law union wholly in the county such sums as the Local Government Board from time to time certify to be due from the said council in substitution for the local grants towards the remuneration of poor law medical officers, and towards the cost of drugs and medical appliances; and

(*b*) Shall grant to the guardians of every poor law union wholly in their county an amount equal to fourpence a day per head for every indoor pauper maintained in that union, and such grant, during the five local financial years beginning on the appointed day, shall be reckoned according to the average number of indoor paupers so maintained during the five financial years ending on the twenty-fifth day of March next before the passing of this Act, and shall, after the end of the said five local financial years, unless Parliament otherwise determine, continue to be reckoned in accordance with the same average number; and

(*c*) Shall pay to the guardians of every poor law union, a portion of which only is situate in their county, such proportion of the annual sum which is, under the other provisions of this Act, payable by the county council of a county to the guardians of that union, as the rateable value of the portion within the administrative county of London bears to the rest of the union.

As to what is the administrative county of London, see section 40, subsection (1), *ante*, p. 72.

Sect. 43. NOTE SUB-S. 1.

Temporary provision for these grants during the current year is made by section 121, *post.*

The payment under (*a*) is similar to that made by other county councils under sections 24 and 26, *ante.*

The grant in respect of indoor paupers is to be in addition to any payment made out of the Metropolitan Common Poor Fund. See section 94, *post.*

For the definition of "indoor paupers," see the next sub-section.

As to the estimate of the average number, see sub-section (3), *infra.*

Payments are made by county councils to guardians under sections 24 and 26, *ante.*

(2) For the purposes of this section the expression "indoor pauper" includes all paupers maintained in a workhouse, and all paupers maintained in any district school, separate school, separate infirmary, sick asylum, hospital for infectious diseases, or institution for the deaf, dumb, blind, or idiots, or in any certified school under the Act of the session of the twenty-fifth and twenty-sixth years of the reign of Her Majesty, chapter forty-three, and includes any children boarded out, whether within or without the limits of the union, and in the metropolitan asylum district includes all inmates of any asylum for imbeciles provided by the managers of that district, but excludes paupers relieved in casual wards, and such number of indoor paupers in a workhouse or in a district or separate school or in a separate infirmary or asylum, as exceeded the number prescribed by the Local Government Board for that workhouse, school, infirmary, or asylum, and also excludes paupers maintained for part only of a day: Provided always, that any paupers maintained under any contract or agreement in a workhouse other than that of the union to which they are chargeable, shall be included only in the number of indoor paupers of the union to which they are so chargeable.

The text contains a very elaborate definition of indoor paupers, but its importance is limited to the Local Government Board, whose duty it will be to consider it with a view to making the estimate under the next sub-section.

(3) The average number of paupers shall be estimated in such manner as the Local Government Board direct, and shall be certified by the Board. The Board may, if they think proper, vary their certificate, but unless it is so varied, their certificate shall be conclusive.

Transfer of duties under 32 & 33 Vict. c. 67,

44. On and after the appointed day all powers and duties of the clerk to the managers of the metropolitan asylums district under the Valuation (Metropolis) Act, 1869, shall be transferred to the clerk of the county council of London, and the said Act shall be

Sect. 44. construed as if the county council were substituted therein for the managers of the metropolitan asylums district.

of clerk of metropolitan asylum managers.

By the Valuation (Metropolis) Act, 1869, 32 & 33 Vict. c. 67, s. 14, a duplicate of the revised valuation list is to be sent to the clerk of the managers of the metropolitan asylums district; and by section 16 the list so sent is to be deposited at the office of such managers. The clerk is by section 17 to cause the totals of the gross and rateable values of all the lists to be printed, and a copy to be sent to every assessment committee and to the clerks of the peace for every county in which any parish to which such totals relate is situate. By section 42, sub-section (8), the assessment committee are to approve and send the lists to the clerk before the 1st of November in each year, and by sub-section (11) the clerk is to send out the printed totals before the 1st of December, and is to return the valuation list to the committee not sooner than fourteen nor later than twenty-one days after the totals are sent out.

Adjustment of law as to slaughter-houses in the metropolis.

45. On and after the appointed day, the powers, duties, and liabilities of justices out of session in the Metropolis, in relation to the licensing of slaughter-houses for the purpose of the slaughtering of cattle for butcher's meat, and of cow-houses and places for the keeping of cows, shall be transferred to the county council of London.

It is provided by 25 & 26 Vict. c. 102, s. 93, that no place within the metropolis shall be used by any person carrying on the business of a slaughterer of cattle, or cowkeeper or dairyman, as a slaughter-house for the purpose of slaughtering cattle, or a cow-house or place for the keeping of cows, without a license had for such purpose respectively from the justices of the peace assembled at a special session held in the division or district where such slaughter-house, &c., is situate, and such license shall continue in force for one year from the granting thereof. By 37 & 38 Vict. c. 67, s. 10, where the sanction of the vestry or district board has been given for the establishment of a slaughterer's business under that Act, the justices must grant their license under the former Act as a matter of course. The same section also provides for the renewal of such licenses. The powers of the justices under these Acts are in future to be exercised by the county council.

Application of Act to Special Counties and to Liberties.

Application of Act to certain special counties.

46. For the purposes of this Act there shall be enacted the provisions following, that is to say,

(1)—(*a*) The ridings of Yorkshire and the divisions of Lincolnshire shall respectively be separate administrative counties.

(*b*) The eastern and western divisions of Sussex, under the County of Sussex Act, 1865, and the eastern and western divisions of Suffolk, shall respectively be separate administrative counties for the purposes of this Act.

28 & 29 Vict. c. 37.

(*c*) The Isle of Ely, and the residue of the county of Cambridge, shall be respectively separate administrative counties for

the purposes of this Act, and are in this Act referred to as divisions of the county of Cambridge.

(*d*) The soke of Peterborough and the residue of the county of Northampton shall be respectively separate administrative counties for the purposes of this Act, and are in this Act referred to as divisions of the county of Northampton.

These divisions of counties, which for the purposes of this Act are treated as separate counties, necessitated the introduction of the phrase "administrative counties," defined in section 100, *post*.

(2)—(*a*) In the case of the county of York and the county of Lincoln respectively, the administrative business which would, if this Act had not passed, have been transacted by the justices of all the ridings and divisions at their gaol sessions, or by any joint committee of the justices of such ridings or divisions, or by any commissioners appointed by the justices, or otherwise jointly by such justices, shall be transacted by a joint committee of the county councils of the three ridings or three divisions, as the case may be, appointed in manner provided by this Act with respect to joint committees of county councils.

(*b*) The administrative business which would, if this Act had not passed, have been transacted by any general sessions of the peace for the county of Sussex or Suffolk, or by any joint action of the quarter sessions of the divisions of the county of Cambridge, or the county of Northampton, and all matters under this Act which concern the two divisions of Sussex, Suffolk, Cambridge, or Northampton jointly, shall be transacted by a joint committee of the respective county councils concerned, appointed in manner provided by this Act with respect to joint committees of county councils.

(*c*) A joint committee formed in pursuance of this section shall, if the business transacted by them so require, comprise a joint committee of the quarter sessions of the several ridings and divisions.

(*d*) If any difference arises as to the number of members, or the mode or time of appointing a joint committee under this

Sect. 46. Sub-s. 2*d*.

section, the difference shall be determined by a Secretary of State.

As to gaol sessions in Yorkshire and Lincolnshire, see 5 Geo. 4, c. 12; 7 Geo. 4, c. 63, s. 18; and 28 & 29 Vict. c. 126, ss. 5, 6.
As to the formation of joint committees, see sub-section (3), *infra*.

(3) A joint committee formed in pursuance of this section shall, in respect of the business to be transacted by them, stand in the same position as if the entire county were not divided for the purposes of county councils, and as if the committee were the county council of the entire county, and the provisions of this Act shall, so nearly as circumstances admit, apply accordingly, and all costs or sums payable by the joint committee shall be apportioned by the joint committee between the several administrative counties in such manner as is provided by law, or by the practice heretofore adopted, or in such other manner as may be from time to time agreed upon by the councils of the several administrative counties, or in default of agreement may, upon the application of any of such councils, be determined by arbitration in manner provided by this Act; and each county council shall pay the sum so apportioned to the treasurer of the joint committee, and the sum so paid shall be deemed to be paid for general county purposes.

The "entire county" is defined by section 100, *post*.
As to "arbitration in manner provided by this Act," see section 62, *post*.

(4) The powers, duties, and liabilities of the county authority, under the Yorkshire Registries Act, 1884, and the Acts amending the same, shall, after the appointed day, be transferred to the county council, and the expression "county authority" in those Acts shall mean, as respects each riding, the county council of that riding.

The Yorkshire Registries Act, 1884, is the 47 & 48 Vict. c. 54, and it is amended by 48 & 49 Vict. c. 26.

(5) In the application of this Act to Lancashire, the provisions of this Act with respect to county rates shall apply to the special rates levied in Lancashire for the purposes of the salary or pension of any chairman of quarter sessions or stipendiary justice, or for any assize courts, and such

rates shall continue to be levied within the respective areas within which they would have been levied if this Act had not passed, and, subject as aforesaid, the position and salary of any such chairman or justice shall not be affected by any provision of this Act.

(6) From and after the appointed day the right of the mayor, commonalty, and citizens of the city of London to elect the sheriff of Middlesex shall cease, and it shall be lawful for Her Majesty the Queen to appoint a sheriff of the county of Middlesex, and the law relating to sheriffs shall apply in the case of the county of Middlesex in like manner as in the case of any other county.

As to the sheriff of the county of London, see section 40, sub-section (2), *ante*, p. 72. By section 41, sub-section (8), the sheriffs of the city of London are not to have authority beyond the city. As to the first sheriffs of London and Middlesex, see section 113, *post*.

(7) In this section "administrative business" means such business as is by this Act transferred from quarter sessions or justices, or any committee thereof, to county councils.

See sections 3, 4, 7, 9, *ante*.

Saving for Manchester Assize Courts Act, 1858, 21 & 22 Vict. c. xxiv.

47. (1) Notwithstanding anything in this Act, the courts of assize at Manchester, with the lodgings for Her Majesty's judges, offices, lock-ups, and all other property vested in the justices of the peace of the county palatine of Lancaster by the Manchester Assize Courts Act, 1858, shall be vested in the county council of the said county palatine, and shall be under the control and management of a joint committee of members of the said county council, and of the council of every county borough locally situate in the hundred of Salford; and that joint committee shall have and exercise all such powers and rights (except the power of levying, imposing, or assessing a rate or of borrowing money) as are conferred on the said justices by the said Act; and the hundred of Salford (including every borough locally situate therein) shall continue liable to contribute towards expenses incurred under the authority of the said Act.

(2) The number of members of a joint committee appointed for the purposes of this section shall not exceed twelve, and the quorum requisite for the transaction of business shall be three.

Sect. 47. Sub-s. 3.

(3) Any disagreement as to the number of members of the committee or as to the proportions in which the several councils are to be represented thereon, shall be settled by a Secretary of State.

Merger of liberties in county.

48. (1.) For all purposes of this Act, every liberty and franchise of a county, wholly or partly exempt from contribution to the county rate, shall, save as may be otherwise provided by or in pursuance of this Act, form part of the county of which it forms part for the purposes of parliamentary elections.

This provision practically abolishes liberties and franchises for all purposes of the Act. If it is desired to abolish any liberty for all purposes whatever, it may be done by Her Majesty in Council under 13 & 14 Vict. c. 105.

(2) The provisions of this Act with respect to the transfer to the county council of the powers, duties, and liabilities of the quarter sessions and justices of a county, and of their property, debts, and liabilities, whether vested in or attaching to the clerk of the peace or any justice or justices or otherwise on behalf of the county, shall apply to every such liberty and franchise as above mentioned in like manner in all respects as if they were herein re-enacted and in terms made applicable to such liberty and franchise; and the county council shall have and exercise in every such liberty and franchise the powers and duties transferred to them by this Act from the quarter sessions and justices of the county;

This transfers to the county council all such powers, duties, &c., of the quarter sessions or justices of a liberty as are transferred to them from the quarter sessions of the county at large.

(3) Provided that where at the passing of this Act the police force in such liberty or franchise is under the control of the quarter sessions for such liberty or franchise, there shall be one police force for the whole administrative county under the county council, and the quarter sessions of such liberty or franchise shall appoint such number of the members of the standing joint committee under this Act as may be agreed upon by the county council, the quarter sessions of the county, and the quarter sessions of the liberty or franchise, or in default of agreement may be determined by a Secretary of State.

As to the standing joint committee, see section 30, *ante*, p. 50. The separate police force for the liberty will thus be abolished, and the police of the liberty will become county police.

(4) The Cinque Ports and two ancient towns and their members shall for all purposes of the county council and of the powers

and duties of quarter sessions and justices out of sessions under this Act form part of the county in which they are respectively situate, without prejudice nevertheless to the position of any such port, town, or member as a quarter sessions borough under the Municipal Corporations Act, 1882, as amended by this Act, and without prejudice to the existing privileges of such ports, towns, and members as respects matters which are not affected by this Act. Sect. 48. Sub-s. 4. 45 & 46 Vict. c. 50.

The Cinque Ports were originally Sandwich, Dover, Hythe, Romney, and Hastings, but to these were added the two "ancient towns" of Winchelsea and Rye. To each of these municipal towns, except Hythe and Winchelsea, were attached subordinate ports or towns, called corporate members of the principal port. Besides these there were a number of towns, villages, and hamlets, which formed the unincorporated members of the Cinque Ports, all exclusively under the jurisdiction of their respective ports, from which they were in some cases a long distance off. See *Archbold's Quarter Sessions*, p. 50, where an account of the jurisdiction of the justices and the quarter sessions of the Cinque Ports is shortly stated. For the purposes of the powers and duties transferred to the county council, the Cinque Ports are to be merged in the counties of Kent or Sussex, as the case may be. The proviso at the end of the section appears to refer to Hastings and Dover, both of which fall within the provisions of section 35, *ante*, p. 62, as to the larger quarter sessions boroughs.

Power to make Provisional Order for Scilly Islands.

49. (1) It shall be lawful for the Local Government Board to make a Provisional Order for regulating the application of this Act to the Scilly Islands, and for providing for the exercise and performance in those islands of the powers and duties both of county councils and also of authorities under the Acts relating to highways and the Public Health Act, 1875, and the Acts amending the same, and for the application to the islands of any provisions of any Act touching local government, and any such Order may provide for the establishment of councils and other local authorities separate from those in the county of Cornwall, and for the contribution by the Scilly Islands to the county council of Cornwall in respect of costs incurred by the county council for matters specified in the said Order as benefiting the Scilly Islands, and such Order may also provide for all matters which appear to the Local Government Board necessary or proper for carrying the Order into full effect.

As to the making of a provisional order, see section 87, *post*.

(2) Any such Order shall not be in force until it is confirmed by Parliament.

(3) Subject to the provisions of a Provisional Order under this Act, the county council of Cornwall shall have no greater powers

Sect. 49. Sub-s. 3.

or duties in the Scilly Islands than the quarter sessions of Cornwall have hitherto in fact exercised or performed therein, and the Scilly Islands shall not be included for the purposes of this Act in any electoral division of the county of Cornwall.

PART III.

Boundaries.

Boundary of county for first election.

50. (1) The first council elected under this Act for any administrative county shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of this Act for the purpose of the election of members to serve in Parliament for the county: Provided always, that—

(*a*) This enactment shall not apply to the boundary between two administrative counties which are portions of one entire county, and in case of those administrative counties, the boundary between the portions, as existing for the purposes of county rate, shall, subject to any change made by or in pursuance of this Act, be the boundary of the administrative county for which the council is elected; and,

(*b*) Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the Census of one thousand eight hundred and eighty-one.

(*c*) Where any portion of an administrative county has before the passing of this Act been transferred to another administrative county for the purposes of the Acts relating to the police or Contagious Diseases (Animals) or otherwise, nothing in this Act shall affect such transfer.

(*d*) The wapentake of the ainsty of York (except so much as is included in the municipal borough of York as extended by the York Extension and Improvement Act, 1884) shall for all purposes of this Act be deemed to be part of the west riding of the county of York.

47 & 48 Vict. c. ccxxxii.

As to the definition of "administrative county," see section 100, *post*. The boundary of an entire county is that which exists for the purposes of parliamentary elections, but where an entire county is divided into administrative counties, the boundary between these is to be that existing for the purposes of the county rate.

As to future changes of boundaries, see section 54, *post*.

The provision as to urban sanitary districts in two or more counties deserves attention.

A portion of a county may have been transferred to another, and for purposes of police under 3 & 4 Vict. c. 88, s. 2, and 21 & 22 Vict. c. 68, s. 2, and for purposes of the Contagious Diseases (Animals) Acts by 47 & 48 Vict. c. 47. The transferred portion is to remain transferred for these purposes only.

Sect. 50. Note Sub-s. 1.

(2) The county council elected under this Act shall have for the purposes of this Act authority throughout the administrative county for which it is elected, and the administrative county as bounded for the purpose of the election shall, subject to alterations made in manner hereinafter mentioned, be for all the purposes of this Act the county of such county council.

(3) If any difference arises as to the county which contains the largest portion of the population of any such district as above in this section mentioned, such difference shall be referred to the Local Government Board, whose decision shall be final.

(4) This section applies to an administrative county within the meaning of this Act, save that it shall not apply to the administrative county of London, nor to any county borough, and any place which, though forming part of such borough for the purposes of the election of members to serve in Parliament, is not within the municipal boundary of such borough shall, notwithstanding anything in the foregoing provisions of this section, form for the purposes of this section, part of the county in which such place is situate.

An administrative county within the meaning of this Act is defined by section 100, *post*.

51. In the constitution of electoral divisions of a county, whether for the first election or for subsequent elections, the following directions shall be observed— Directions for constitution of electoral divisions.

(1) The divisions shall be arranged with a view to the population of each division being, so nearly as conveniently may be, equal, regard being had to a proper representation both of the rural and of the urban population, and to the distribution and pursuits of such population, and to area, and to the last published census for the time being, and to evidence of any considerable change of population since such census;

Electoral divisions are to be formed, in counties by the quarter sessions, and in boroughs returning more than one councillor by the councils of such boroughs. See section 2, sub-section (3), *ante*, p. 3. This section contains directions for the formation of these divisions. The divisions are to contain, as nearly as possible, the same population, but this principle is not to apply

Sect. 51. Note Sub-s. 1.

universally. Regard is to be had to area, so that one division shall not be too extensive through containing a smaller population while another containing a larger population is unduly limited in area. The relative distribution of the urban and rural population and their pursuits is also to be taken into account; but it is hardly possible to lay down any general rules to give effect to these provisions.

Regard must also be had to the areas for which separate lists or parts of lists of voters have been made, so that the electoral divisions may be formed in such a way that there will be no difficulty in ascertaining who are the voters entitled to vote in each division.

As to the power of the Local Government Board to remedy defects at the first election, see 108, *post*.

As to the electoral divisions in the metropolis, see section 40, sub-section (4), *ante*, p. 73.

(2) Electoral divisions shall, so far as may be reasonably practicable, be framed so that every division shall be a county district or ward, or a combination of county districts or wards, or be comprised in one county district or ward, but where an electoral division is a portion of a county district, or ward, and such portion has not a defined area for which a separate list or part of a list of voters is made under the Acts relating to the registration of electors, such portion shall, until a new register of electors is made, continue to be part of the district or ward of which it has been treated as being part in the then current register of electors;

(3) Whenever under the provisions of this section a county district is divided into two or more portions, every such portion shall, as far as possible, consist of an entire parish or of a combination of entire parishes;

The general principle of these directions is that the electoral divisions are to be formed so as not to overlap an urban sanitary district, ward, or rural sanitary district, except in so far as it may be necessary to give effect to sub-section (1). Regard is also to be had to the boundaries of parishes. Where a parish is partly within and partly without a borough or urban district, each parish is to be considered a separate parish for this purpose. (See section 100, *post*.)

The word "ward" is not defined in the Act, but it evidently means a ward of an urban district.

(4) In determining the electoral divisions for the first election, the foregoing provisions shall apply as if, where a rural sanitary district is situate in more than one county, each portion of the district which is situate in the same county were a county district, and any such portion may be combined with a county district, or portion of a county district, although not adjoining;

Each portion of a rural district in one county is to be treated as if it were a separate county district.

(5) The electoral divisions for the first election shall be fixed on or before the eighth day of November next after the passing of this Act.

The divisions must be fixed on or before the 8th of November, 1888. As to the future alteration of electoral divisions, see section 54, *post*.

Provisional order as respects boroughs and urban sanitary districts in same area.

52. (1) The Local Government Board shall make provisional orders for dealing with every case where the council of a borough is not the urban sanitary authority for the whole of the area of such borough, and the area of the borough is either co-extensive with or is wholly or partly comprised in any urban sanitary district, and such order shall determine whether the area of the borough or of the sanitary district, or an area comprising both the borough and the urban sanitary district, or a portion of such united area, shall, whether with or without any adjoining area, be the area of the county district for the purposes of this Act, so, however, that in either case the order shall provide for the council of the borough becoming the district council, and the order may for that purpose alter the boundaries of the borough, and may, if need be, alter the boundaries of the county; and if the population exceeds fifty thousand, the order may constitute the borough into a county borough, and make such provision as may be necessary for carrying this Act into effect as respects such county borough; and the provisions of this Act respecting county boroughs shall, subject to the provisions of the order, apply.

This section provides for a few exceptional cases now existing where a borough is included in an urban district but the council of the borough are not the urban authority. In these cases the Local Government Board are to make provisional orders under section 87, *post*. The order will fix the area of the county district so that the borough council shall become the urban authority, and it may, if necessary, provide for alteration of the boundaries of the borough or even of the county, and for making the borough a county borough. As to county boroughs, see sections 31—34, *ante*.

(2) Where certain members of the sanitary authority for any such urban sanitary district are appointed by a university or any colleges therein, the order may provide for the appointment by such university or colleges of members on the district council.

As to Cambridge, see the Public Health Act, 1875, section 6; and as to Oxford, see section 342 of the same Act.

The provisional order may in the cases mentioned in the text provide for the appointment by the university or college of members of the district council, *i.e.*, of the borough council. See sub-section (1), *supra*.

(3) A provisional order under this section shall not be of any effect until it is confirmed by Parliament.

Sect. 53. Sub-s. 1.

Consideration of alterations of boundaries by county councils.

53. (1) Every report made by the Boundary Commissioners under the Local Government (Boundaries) Act, 1887, shall be laid before the council of any administrative county or county borough affected by that report.

The reports made by the Boundary Commissioners have now been laid before Parliament.

(2) It shall be the duty of the council to take into consideration such report, and to make such representations to the Local Government Board as they think expedient for adjusting the boundaries of their county, and of other areas of local government partly situate in their county, with a view of securing that no such area shall be situate in more than one county.

This will be one of the first duties of the county councils.

There is no definition in the Act of "areas of local government," but it appears to be wide enough to include all areas which exist for such purposes as lighting, burials, highways, sanitary purposes, education, &c.

The representations made by the county councils will be dealt with under the next section.

With regard to unions situate in more than one county, see section 58, *post*.

Future alterations of boundaries.

54. (1) Whenever it is represented by the council of any county or borough to the Local Government Board—

(*a*) That the alteration of the boundary of any county or borough is desirable; or

(*b*) That the union, for all or any of the purposes of this Act, of a county borough with a county is desirable; or

(*c*) That the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable; or

(*d*) That it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough; or

(*e*) That the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable; or

(*f*) That the alteration of any area of local government partly situate in their county or borough is desirable;

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry, and may make an order for the proposal contained in such representation, or for such other proposal as

they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division. Sect. 54. Sub-s. 1.

This sub-section enumerates the several kinds of representation which may be made by county councils under the last section.

It is difficult to suggest what special reasons may exist to induce the Local Government Board not to entertain a representation. This provision seems to give that Board an absolute discretion as to whether they will entertain a representation or not.

As to local inquiries, see section 87, *post.*

In the cases (*a*), (*b*), (*c*), and (*d*), the order of the Board is to be provisional. (As to provisional orders, see section 87, *post.*) In other cases the order will be final.

(2) Provided, that in default of such representation by the council of any county or borough before the first day of November, one thousand eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such order as they may deem expedient.

This enables the Local Government Board to act in default of representation by the date named ; and see sub-section (5), *infra.*

(3) Provided, that if the order alters the boundary of a county or borough, or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, or for constituting a borough into a county borough, it shall be provisional only, and shall not have effect unless confirmed by Parliament.

See the note to sub-section (1), *supra.*

(4) Where such order alters the boundary of a borough, it may, as consequential upon such alteration, do all or any of the following things, increase or decrease the number of the wards in the borough, and alter the boundaries of such wards, and alter the apportionment of the number of councillors among the wards, and alter the total number of councillors, and in such case make the proportionate alteration in the number of aldermen.

This provision is obviously necessary when a borough is divided into wards.

(5) At any time before the appointed day, the Local Government Board may make an order in pursuance of this section without any such representation as in this section mentioned.

This power can only be exercised before the appointed day, as to which see section 109, *post.* After the appointed day, the Board cannot act without a representation from the county council, except as provided by sub-section (2), *supra.*

Sect. 55.

Contents of provisional order amalgamating two county boroughs.

55. (1) Where the Local Government Board make a provisional order for uniting two county boroughs, such order may make them one borough and one county for the purposes of this Act.

Such a provisional order may be made under section 54, sub-sections (1) and (3), *ante*.

(2) Such order and also any other order under this Act for uniting boroughs, whether county boroughs or not, may also contain such provisions as may seem necessary or proper for regulating the division of the combined borough into wards, the number of councillors to be elected for each ward, and the first election of the council of the combined borough, and for providing for the clerks of the peace, coroners, town clerks, and officers of the boroughs, and the application to them of the provisions of this Act as to existing officers, and for providing for all matters incidental to or consequential on the union of the boroughs,

An order for uniting boroughs may be made under section 54, sub-section (1) and (3), *ante*.

The provisions of this Act as to existing officers are contained in sections 118—120, *post*.

(3) When any such provisional order is confirmed, it shall be lawful for Her Majesty to grant a commission of the peace and court of quarter sessions to the combined borough in like manner as to any other borough under the Municipal Corporations Act, 1882, and the provisional order may contain such provisions as appear necessary or proper for regulating all matters incidental to such grant, and to the changes caused by the union of the boroughs in matters connected with such commission or court or otherwise with the administration of justice.

A provisional order must be confirmed by Parliament. See section 54, sub-section (3), *ante*.

A commission of the peace is granted to a borough under section 157 of the Municipal Corporations Act, 1882. A separate court of quarter sessions is made under section 162 of the same Act. See section 37 of this Act as to the effect of such a grant.

Procedure for charter of new borough.

56. Where a petition is presented to Her Majesty the Queen by the inhabitant householders of any town or towns or district, in pursuance of the Municipal Corporations Act, 1882, for the grant of a charter of incorporation, notice of such petition shall be given to the county council of the county in which such town, towns, or district is or are situate, and shall also be sent to the Local Government Board, and the Privy Council shall consider any

representations made by such county council or the Local Government Board, together with the petition for such charter. Sect. 56.

A charter is granted to a new borough under Part XI. of the Municipal Corporations Act, 1882, on petition to the Queen by the inhabitant householders of the district for which the charter is desired. The petition is referred to a committee of the Privy Council, and considered by them after notices have been duly published of their intention to do so. The notice of petition must now be sent to the county council and the Local Government Board, whose representations (if any) must be considered by the committee of the Privy Council along with the petition for the charter.

Future alteration of county districts and parishes and wards and future establishment of urban districts.

57. (1) Whenever a county council is satisfied that a *primâ facie* case is made out as respects any county district not a borough, or as respects any parish, for a proposal for all or any of the following things; that is to say—

(*a*) The alteration or definition of the boundary thereof;

(*b*) The division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish;

(*c*) The conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts;

(*d*) The division of an urban district into wards; and

(*e*) The alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,

the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality and to the Local Government Board, Education Department, or other Government department as may be prescribed, and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

This section applies to the alteration of boundaries of urban districts (other than boroughs), rural districts, and parishes, the establishment of urban districts, and the creation or alteration of wards in urban districts.

The existing powers for the alteration, &c., of parishes are those of the Local Government Board under the Acts mentioned in the note to sub-section (7), *infra*.

Urban districts are at present created under the Public Health Act, 1875, which also deals with the division of such districts into wards and the altera-

Sect. 57. tion of wards. The provisions of that Act as to these matters will be superseded by the text.

NOTE SUB-S. 1. The "prescribed" notices to Government departments are those prescribed by the Local Government Board under section 87, sub-section (4), *post*.

The order under this sub-section is made by the county council, subject, however, to the provisions contained in the following sub-sections.

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards, shall come into operation upon being finally approved by the county council.

The "prescribed manner" means as the Local Government Board may prescribe. See section 87, sub-section (4), *post*.

After the notices here referred to have been given, the order, if it relates to the matters above specified, must be again approved by the county council, and it will then come into operation at once. The cases mentioned are those specified in sub-section (1) (*d*) and (*e*).

(3) In any other case the order shall be submitted to the Local Government Board; and if within three months after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.

"In any other case" means in any of the cases mentioned in sub-section (1) (*a*) (*b*) and (*c*).

During three months the order will be of no effect. If petitioned against as here provided, the Local Government Board must hold a local inquiry under section 87. After such inquiry the Board may refuse to confirm the order, or they may confirm it with modifications. See sub-section (5), *infra*.

(4) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order.

Observe that this provision is imperative. The Local Government Board have no discretion in the matter.

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(5) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

See the note to sub-section (3), *supra*.

(6) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

(7) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

The powers of the Local Government Board as to the adjustment of parishes are conferred by 30 & 31 Vict. c. 106, s. 3; 34 & 35 Vict. c. 70; 39 & 40 Vict. c. 61, ss. 1—9; 42 & 43 Vict. c. 54; 45 & 46 Vict. c. 58.

Additional power of Local Government Board as to unions.

58. The Local Government Board, where it appears expedient so to do with reference to any poor law union which is situate in more than one county, instead of dissolving the union may by order provide that the same shall continue to be one union for the purposes of indoor paupers or any of those purposes, and shall be divided into two or more poor law unions for the purpose of outdoor relief, and may by the order make such provisions as seem expedient for determining all other matters in relation to which such union is to be one union or two or more unions.

The Local Government Board has power to alter or dissolve a union under 4 & 5 Will. 4, c. 76, s. 32; 7 & 8 Vict. c. 101, s. 66; 31 & 32 Vict. c. 122, s. 4; 39 & 40 Vict. c. 61, s. 11.

The text enables the Board to divide a union for the purpose of outdoor relief while continuing it as one union for other purposes, such as the workhouse.

This forms an exception to the general scheme of the Act as stated in section 53, that no area of local government shall be situate in more than one county.

Supplemental provisions as to alteration of areas.

59. (1) A scheme or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient.

This provision applies apparently to any scheme or order under the Act. A scheme for regulating quarter sessions in London may be made under section 42, sub-section (7), *ante*, p 78. Orders may be made under many sections, but see especially sections 52—57, *ante*.

(2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form

Sect. 59. Sub-s. 2.

part of that county for all purposes, whether sheriff, lieutenant, *custos rotulorum*, justices, militia, coroner, or other. Provided that—

(*a*) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and

(*b*) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and

(*c*) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rentcharge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

As to the definition of "administrative county," see section 100, *post*.
The purposes specified are merely illustrative, not restrictive.
As to coroners whose district is in two administrative districts, see section 5, sub-sections (3), (4), *ante*, p. 12.

(3) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act, for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888, or this Act, continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place.

51 & 52 Vict. c. 10.

(4) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(*a*) May provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local

authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, *custos rotulorum*, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

(*b*) May make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order, and applying to them the provisions of this Act as to existing officers; and

(*c*) May provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and

(*d*) May provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and

(*e*) May adjust any property, debts, and liabilities affected by the scheme or order.

The provisions of this sub-section are most comprehensive. The scheme or order may apparently provide for every conceivable contingency incidental to or consequential upon it.

The costs mentioned in paragraph (*a*) will apparently include the salaries and remuneration of officers.

(5) Where an alteration of boundaries of a county is made by this Act an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

An alteration of boundaries of a county is made by the Act under sections 48, 49, 50.

As to provisional orders, see section 87, *post*.

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(6) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament, or to be confirmed by Parliament, either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act.

Orders must be laid before Parliament under section 57, sub-section (6). Provisional orders must in every case be confirmed by Parliament. See section 87, *post*.

General provision as to alteration of boundaries

60. In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government.

This is a general direction. Areas of local government include unions, urban districts, highway districts, parishes, and similar areas.

Appointment of commissioners.

61. (1) For the purposes of this Act the Right Honourable Edward Henry, Earl of Derby, the Right Honourable George John Shaw-Lefevre, John Lloyd Wharton, Esquire, Francis Mowatt, Esquire, C.B., and Joseph J. Henley, Esquire, shall be appointed Commissioners.

The duties of the Commissioners are prescribed by sections 32, 40, sub-section (7), section 61 and section 62, &c.

(2) If a vacancy occurs in the office of any of the Commissioners by reason of death, resignation, incapacity, or otherwise, it shall be lawful for Her Majesty the Queen, under Her Royal Sign Manual, to appoint some other person to fill the vacancy, and so from time to time as often as occasion requires.

(3) The Commissioners may from time to time, with the assent of the Treasury as to number, appoint or employ such number of officers and persons as they may think necessary for the purpose of the execution of their duties under this Act, and may remove any officer or person so appointed or employed.

The expression "the Treasury" means the Commissioners of Her Majesty's Treasury. See section 100, *post*.

(4) There shall be paid to any officer or person appointed or employed under this section, such salaries or other remuneration as the Treasury may assign, and that remuneration and all expenses

of the Commissioners, incurred with the sanction of the Treasury in the execution of this Act, shall be paid out of moneys provided by Parliament. Sect. 61. SUB-S. 4.

(5) On holding any inquiry for the purposes of this Act, any Commissioner or officer of the Commissioners shall have the same powers as an inspector of the Local Government Board has on holding a local inquiry under the Public Health Act, 1875. 38 & 39 Vict. c. 55.

An inspector of the Local Government Board has, by virtue of section 296 of the Public Health Act, 1875, for the purpose of any inquiry, in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of these Acts. The 4 & 5 Will. 4, c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21, contain the provisions as to the powers of poor law inspectors.

(6) There shall be paid to the Commissioners by the councils of the counties and county boroughs whose financial relations are adjusted by the Commissioners in pursuance of this Act, such amounts as the Treasury may fix as necessary for the payment of the costs of such adjustment, including a proper share of the salaries and remuneration of the officers and persons appointed or employed by such Commissioners, and such amounts shall be paid into the Exchequer, and the amount so paid shall be included as part of the adjustment.

These councils and county boroughs will be those enumerated in the 3rd Schedule, and those referred to in section 40, sub-section (7), in default of agreement.

(7) The authority of the Commissioners shall extend to the settlement and the determination by them, on such terms and in such manner as they, in their absolute discretion, think most just and fit, of the matters referred to them, and also of all such matters and questions as are, in their judgment, incident thereto or consequent thereon, to the end that their award or awards may effect a final settlement, and until a final settlement is made the authority of the Commissioners shall extend to determine the proportions in which payments are to be made to the councils of counties and county boroughs out of the Local Taxation Account, and all payments so made shall be taken into account in the making of the adjustment.

See with reference to the concluding part of this sub-section, section 32, sub-section (7), which provides that the Commissioners shall take into account sums paid by the county or county borough pending the adjustment.

As to the adjustment generally see section 32, *ante*, p. 52.

Sect. 61. Sub-s. 8.

(8) Every award, order, and other instrument made by or proceeding from the Commissioners, shall be binding and conclusive to and for all intents and purposes, and shall have the like effect as if it had been made by a judge of the High Court of Justice in England, and shall be acted on, obeyed, executed, and enforced by all sheriffs and other officers and persons accordingly. No such award, order, or other instrument shall be removable by any writ or process into any of Her Majesty's Courts, and the Commissioners, proceedings, or acts shall not be liable to be interfered with or questioned by or in any court, or elsewhere, by way of mandamus, prohibition, injunction, or otherwise.

The award of the Commissioners will have the same effect as a judgment and it will be absolutely conclusive.

(9) The costs of and attending the inquiry and award shall be borne and paid by the parties out of the fund or rate applicable to their general expenses, in such proportions as the Commissioners may direct, and the Commissioners may order the taxation of any costs in such manner as they may see fit.

The fund or rate will be the county fund or rate, or the borough fund or rate, as the case may be.

(10) The powers of the Commissioners shall, unless continued by Parliament, cease on the last day of December, one thousand eight hundred and ninety.

Adjustment of property and liabilities.

62. (1) Any councils and other authorities affected by this Act or by any scheme, order, or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities, and expenses, so far as affected by this Act or such scheme, order, or thing of the parties to the agreement, and the agreement and any other agreement authorised by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not

exceeding that allowed by the Commissioners under this Act or the Local Government Board. Sect. 62. Sub-s. 1.

This provision gives to councils and other authorities very wide powers as to agreements for the adjustment of property, &c., when that is necessary under this Act.

The Commissioners under this Act are those named in the last section.

(2) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment or determining such difference is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

(3) An arbitrator appointed under this Act shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily. 8 & 9 Vict. c. 18.

The Lands Clauses Acts in so far as they relate to arbitration are 8 Vict. c. 18, ss. 23, 25—37; 32 & 33 Vict. c. 18; 46 Vict. c. 15. These Acts will be found in the Appendix to *Lumley's Public Health*. An arbitrator under this Act will, however, have the further powers above mentioned, viz., to state a case, to determine and disallow costs. By the text he is required and not merely empowered to determine the costs.

(4) Any award or order made by the Commissioners or any arbitrator under this Act may provide for any matter for which an agreement might have provided.

As to what might have been provided for by agreement, see sub-section (1), *supra*.

(5) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the Commissioners, or an arbitrator under this Act, may be paid out of the county or borough fund or out of such other special fund as the council, with the approval of the Commissioners under this Act or of the Local Government Board, may direct.

(6) The payment of any capital sum required to be paid for the purposes of the adjustment, or of an agreement under this Act,

Sect. 62. Sub-s. 6.

or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act, 1882, or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow, and such sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in Part Four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act.

The power of a council to borrow under this Act depends upon section 69, *post*.

As to borrowing by a borough council under the Municipal Corporations Act, 1882, see section 72, *post*, which substitutes the Local Government Board for the Treasury. No consent will be required for borrowing for the purpose above mentioned if the loan is paid off within a period prescribed by the Local Government Board, by a method mentioned in section 69, *post*, or in manner prescribed by a local Act.

(7) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt, or for any other purpose for which capital money may be applied.

The sanction of the Local Government Board will be necessary for any application of this capital sum. See section 69 (3), *post*.

Arbitration by Local Government Board. 31 & 32 Vict. c. 119.

63. Where the Local Government Board are required in pursuance of this Act to decide any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act.

The provisions of the Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, here referred to are contained in sections 30—32, of that Act. Under these, as applied by the above section, the Local Government Board may appoint an arbitrator, whose award or decision shall be that of the Board. The Board may fix the remuneration of the arbitrator. The costs of the arbitration are to be regulated by 22 & 23 Vict. c. 59, which places them in the discretion of the arbitrator. If the award does not otherwise determine, the costs of the arbitration and award are to be borne by the parties in equal shares.

PART IV.

Finance.

Property Funds and Costs of County Council.

Sect. 64. Sub-s. 1.

Transfer of county property and liabilities.

64. (1) On and after the appointed day all property of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer, or commissioners, or otherwise for any public uses and purposes of a county, or any division thereof, shall pass to and vest in and be held in trust for the council of the county, subject to all debts and liabilities affecting it, and shall be held by the county council for the same estate, interest, and purposes, and subject to the same covenants, conditions, and restrictions, for and subject to which that property is or would have been held if this Act had not passed so far as those purposes are not modified by this Act. Provided that—

(*a*) The existing records of or in the custody of the court of quarter sessions shall, subject to any order of that court, remain in the same custody in which they would have been if this Act had not passed; and

(*b*) Where any property belongs to a charity, nothing in this Act shall affect the trust of such charity, and until otherwise directed by the Charity Commissioners for England and Wales, the trustees or managers of the charity shall be appointed in like manner as if this Act had not passed; and

(*c*) The justices of any county may retain any pictures, chattels, or property on the ground that the same have been presented to them or purchased out of their own funds or otherwise belong to them, and are not held for public purposes of the county, and any difference arising between the county council and the justices with respect to any such retention shall be referred to and determined by the Commissioners under this Act.

As to the "appointed day," see section 109, *post*.

The records of the county are in the custody of the *custos rotulorum* or of the clerk of the peace, who is at present appointed by him.

The saving as to pictures, chattels, &c., is intended to preserve to the justices property which may have been presented to them or are not held for public purposes.

As to the Commissioners, see section 61, *ante*, p. 100.

(2) On and after the appointed day all debts and liabilities of the quarter sessions, or of the clerk of the peace, or any justice or

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justices, or treasurer, or commissioners, incurred for county purposes, shall become debts and liabilities of the county council, and shall, subject to the provisions of this Act, be defrayed by them out of the like property and funds out of which they would have been defrayed if this Act had not passed.

(3) The county council shall have full power to manage, alter, and enlarge, and, with the consent of the Local Government Board, to alienate any land or buildings transferred by this section, or otherwise vested in the council, but shall provide such accommodation and rooms, and such furniture, books, and other things as may from time to time be determined by the standing joint committee of quarter sessions and the county council, to be necessary or proper for the due transaction of the business, and convenient keeping of the records and documents, of the quarter sessions and justices out of sessions, or of any committee of such quarter sessions or justices.

The consent of the Local Government Board is necessary for the alienation of any property transferred. As to the proceeds of any sale, see section 65, sub-section (3), *post*.

As to the standing joint committee, see section 30, *ante*, p. 50.

(4) This section shall apply, with the necessary modifications, to the administrative counties of Sussex and Suffolk.

As to these administrative counties, see section 46, *ante*, p. 82.

(5) This section shall apply in the case of the property, debts, and liabilities of the justices of all the ridings and divisions of the counties of York or Lincoln at their gaol sessions, or of commissioners appointed by the justices, in like manner as if it were herein re-enacted with the substitution of gaol sessions or commissioners for quarter sessions, and of clerk of gaol sessions for clerk of the peace, and as if the joint committee of the councils of the three ridings or divisions were the council of the county; and the said joint committee shall, for the purposes of the said property, debts, and liabilities, and for the transaction of the administrative business and execution of their duties under this Act, be a body corporate, with perpetual succession and a common seal, by the name of the county committee, with the prefix of the name of the county, and with power to acquire and hold land for the purposes of their constitution without license in mortmain.

As to the gaol sessions in these counties, see section 46, sub-section (2), *ante*, p. 83.

The joint committees will be corporate bodies known as the Yorkshire County Committee and the Lincolnshire County Committee.

(6) The county council of the soke of Peterborough shall be liable to repair the county bridges in the soke, and if any costs are incurred by the county council of the county of Northampton for the benefit of the soke, an adjustment thereof shall be made by agreement, or by arbitration in manner provided by this Act. Sect. 64. SUB-S. 6.

As to the soke of Peterborough and the residue of the county of Northampton, see section 46, *ante*, p. 82.
As to arbitration under this Act, see section 62, *ante*, p. 103.

65. (1) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county. Power to acquire lands.

Existing county buildings will pass to the county council under the last section, subject, however, to the right of the quarter sessions or justices to use them for the holding of courts. See section 30, sub-section (3), *ante*, p. 51.
As to the standing joint committee, see section 30, *ante*, p. 51.
It should be mentioned that the county council have, by section 3, sub-section (iv.), all the powers formerly possessed by the quarter sessions of providing shire halls, county halls, &c., subject as to the use of buildings by the quarter sessions and justices to the provisions of the Act respecting the standing joint committee.
Observe that the lands, &c., acquired may be within or without the county.

(2) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

The following are the provisions of these sections:—
"176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say,)
(1) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845:
(2) The local authority, before putting into force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall
Publish once at least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking

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may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands:

(3) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires:

(4) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof:

(5) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served:

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons.

"177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

"178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit (but subject and without prejudice to the rights of any lessee, tenant, or occupier), from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty, her heirs or successors in right of the said duchy, or any right, interest, or easement in, through, over, or on any such lands which, for the

purposes of this Act, such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855." Sect. 65. NOTE SUB-S. 2.

(3) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council.

The consent of the Local Government Board to the sale of any land is required by section 64, sub-section (3), *ante*, p. 106.

The sanction of the Board will be necessary for any appropriation of the proceeds of sale.

Costs of justices to be payable out of county fund.

66. All costs incurred by the quarter sessions or the justices out of session of a county, and all costs incurred by any justice, police officer, or constable, in defending any legal proceedings taken against him in respect of any order made, or act done, in the execution of his duty as such justice, police officer, or constable shall, to such amount as may be sanctioned by the standing joint committee of the county council and quarter sessions, and, so far as they are not otherwise provided for, be paid out of the county fund of the county, and the council of the county shall provide for such payment accordingly.

This section was probably inserted in the Act having regard to the recent case of *Stops* v. *Northamptonshire JJ.*, Times L. R., vol. iv., p. 78, where it was held that the justices of a county could not lawfully pay out of the county funds the costs and damages incurred by the chief constable of the county in an action brought against him in respect of acts done in the execution of his duty.

The Municipal Corporations Act, 1882, contains a somewhat similar provision enabling a borough council to pay costs or damages in any action against one of their officers, agents, or servants. This provision is contained in section 226, sub-section (3), of that Act, which is incorporated with this Act, and therefore applies to county councils. See the section and the notes thereto, *post*.

Adjustment of law as respects costs ordered by quarter sessions or justices to be paid.

67. Any order of a court of quarter sessions, or of any justices or justice out of session, for the payment by the county treasurer of costs in criminal proceedings or of costs under the Act of the forty-eighth year of the reign of King George the Third, chapter seventy-five, shall be obeyed by the county treasurer in like manner as heretofore, and the county council shall cause the treasurer, or some other person on his behalf, to attend at every court of quarter

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The 48 Geo. 3, c. 75, provides that the overseers shall bury any dead bodies cast up by the sea, and that their expenses shall be reimbursed by the county treasurer on the order of a justice. The provisions of that Act are extended by 49 Vict. c. 20, to the burial of any dead human bodies found in or cast on shore from any tidal or navigable waters, and to any such body found floating or sunken in any such waters and brought on to the shore or bank thereof. The last-mentioned Act was passed in consequence of the decision in *Woolwich (Overseers of)* v. *Robertson*, 6 Q. B. D. 654; 50 L. J. M. C. 87.

Funds of county council.

68. (1) All receipts of the county council, whether for general or special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made in the first instance out of that fund.

General and special county purposes are defined in the subsequent sub-sections of this section.

(2) In this Act the expression "general county purposes" means all purposes declared by this or any other Act to be general county purposes, and all purposes for contributions to which the county council are for the time being authorised by law to assess the whole area of their administrative county, and the expression "general county account" means the account of the county fund to which the contributions so raised are carried, and any costs incurred for a general county purpose shall be general expenses, and all costs incurred by the county council in the execution of their duties which are not by law made special expenses, shall be general expenses.

Purposes declared by this Act to be general county purposes are found in section 11, sub-section (2), section 23, sub-section (2), section 25, sub-section (2), section 35, sub-sections (3), (5), section 41, sub-section (5), section 46, sub-section (3).

(3) In this Act the expression "special county purposes" means any purposes from contribution to which any portion of the county is for the time being exempt, and also includes any purposes where the expenditure involved is by law restricted to a hundred, division, or other limited part of the county, and the expression "special county account" means any account of the county fund to which contributions for special county purposes are carried, and any costs incurred for a special county purpose shall be special expenses.

(4) If the moneys standing to the general county account of the county fund are insufficient to meet the expenditure for general

county purposes, county contributions may be levied to meet the deficiency on the whole administrative county, and shall be assessed on all the parishes in the county.

(5) If the moneys standing to any special county account of the county fund are insufficient to meet the expenditure for the special county purposes chargeable to that account, county contributions may be levied to meet the deficiency on any parishes in the county liable to be assessed to county contributions for those purposes.

(6) Any precept for county contributions may include as separate items a contribution for general county purposes, and a contribution for any special county purpose or purposes, and subject as in this or any other Act mentioned, county contributions, whether for general or special county purposes, which are liable to be assessed on the parishes, shall be assessed on such parishes in proportion to the annual value thereof, as determined by the standard or basis for the county rate, and all enactments applying to such standard or basis or to county rate shall (save as altered by this Act) apply, so far as may be consistently with the tenor thereof, to county contributions, and those enactments shall extend to all parishes within any borough which are liable under this Act to be assessed to county contributions.

As to the preparation of the standard or basis for the county rate, see section 3, sub-section (i.). See also section 33, *ante*, p. 57.

(7) The county council shall keep such accounts as will prevent the whole administrative county from being charged with expenditure properly payable by a portion only of the county, and will prevent any sums raised in a portion only of the county being applied in reduction of expenditure properly payable by the whole or a larger part of the county, and will further secure any such exemption as above in this section mentioned, and will prevent any sums by law specifically applicable to any particular purpose from being applied to any other purpose.

(8) In determining the amount of expenditure for any particular county purpose, general or special, a proper proportion of the cost of the officers and buildings and establishment of the county council may be added to the expenditure directly expended for that purpose.

The establishment charges are to be apportioned between the general and special county accounts.

(9) County contributions may be made retrospective in order to raise money for the payment of costs incurred, or having become

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payable at any time within six months before the demand of the contributions.

This provision is similar to that contained in the Public Health Act, 1875, s. 210, as to general district rates. It is intended to prevent the raising of legal objections to county rates on the ground that they are retrospective. It will be remembered that retrospective rates are illegal. See *Reg.* v. *Read*, 18 L. J. M. C. 164; *Reg.* v. *Bedlington* (*Overseers of*), 48 J. P. 486.

Borrowing by county council.

69. (1) The county council may from time to time, with the consent of the Local Government Board, borrow, on the security of the county fund, and of any revenues of the council, or on either such fund or revenues, or any part of the revenues, such sums as may be required for the following purposes, or any of them, that is to say:

(*a*) For consolidating the debts of the county; and

(*b*) For purchasing any land or building any building, which the council are authorised by any Act to purchase or build; and

(*c*) For any permanent work or other thing which the county council are authorised to execute or do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years; and

(*d*) For making advances (which they are hereby authorised to make) to any persons or bodies of persons, corporate or unincorporate, in aid of the emigration or colonisation of inhabitants of the county, with a guarantee for repayment of such advances from any local authority in the county, or the Government of any colony; and

(*e*) For any purpose for which quarter sessions or the county council are authorised by any Act to borrow,

but neither the transfer of powers by this Act nor anything else in this Act shall confer on the county council any power to borrow without the consent above mentioned, and that consent shall dispense with the necessity of obtaining any other consent which may be required by the Acts relating to such borrowing, and the Local Government Board, before giving their consent, shall take into consideration any representation made by any ratepayer or owner of property rated to the county fund.

As to borrowing by the London County Council, see section 40, subsection (9), *ante*, p. 74.

The power of borrowing in aid of emigration can only be exercised if a guarantee for repayment is given as provided by the text.

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The chief purposes for which quarter sessions might borrow were as follows: Shire halls, county halls, sessions houses, and judges' lodgings, 7 Geo. 4, c. 63; 35 & 36 Vict. c. 7; station houses and strong rooms, 3 & 4 Vict. c. 88, s. 12; 38 & 39 Vict. c. 89, s. 40; county bridges, 4 & 5 Vict. c. 49; 8 & 9 Vict. c. 32; 43 & 44 Vict. c. 5; 44 & 45 Vict. c. 14; lunatic asylums, 16 & 17 Vict. c. 97, ss. 47—52; reformatory and industrial schools, 37 & 38 Vict. c. 47; militia storehouses, 17 & 18 Vict. c. 105; contagious diseases (animals), 41 & 42 Vict. c. 49, s. 9.

The consent of the Local Government Board is necessary in all cases except that mentioned in sub-section (3), *infra*. The provision as to representations by owners and ratepayers is worthy of attention.

(2) Provided that where the total debt of the county council, after deducting the amount of any sinking fund, exceeds, or if the proposed loan is borrowed will exceed, the amount of one-tenth of the annual rateable value of the rateable property in the county, ascertained according to the standard or basis for the county rate, the amount shall not be borrowed, except in pursuance of a provisional order made by the Local Government Board and confirmed by Parliament.

As to provisional orders, see section 87, *post*.

(3) A county council may also from time to time, without any consent of the Local Government Board, during the period which was fixed for the discharge of any loan raised by them under this Act or transferred to them by this Act, borrow on the like security such amount as may be required for the purpose of paying off the whole or any part of such loan, or if any part of such loan has been repaid otherwise than by capital money for reborrowing the amount so repaid, and for the purpose of this section, "capital money" includes any instalments, annual appropriations, and sinking fund and the proceeds of the sale of land or other property, but does not include money previously borrowed for the purpose of repaying a loan.

As to the proceeds of the sale of land, see section 65, sub-section (3), *ante*.

(4) All money reborrowed shall be repaid within the period fixed for the discharge of the original loan, and every loan for reborrowing shall for the purpose of the ultimate discharge be deemed to form part of the same loan as the original loan, and the obligations of the council with respect to the discharge of the original loan shall not be in any way affected by means of the reborrowing.

(5) A loan under this section shall be repaid within such period, not exceeding thirty years, as the county council, with the consent of the Local Government Board, determine in each case.

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(6) The county council shall pay off every loan either by equal yearly or half-yearly instalments of principal, or of principal and interest combined, or by means of a sinking fund set apart, invested, and applied in accordance with the Local Loans Act, 1875, and the Acts amending the same.

38 & 39 Vict. c. 83.

The Local Loans Act, 1875, is the 38 & 39 Vict. c. 83. The provisions of that Act as to a sinking fund are contained in sections 13—16, amended by 48 & 49 Vict. c. 30. These Acts will be found set out in *Lumley's Public Health*, pp. 924, 1189.

(7) Where a loan is raised for any special county purpose, the council shall take care that the sums payable in respect of the loan are charged to the special account to which the expenditure for that purpose is chargeable.

As to special county purposes, see section 68, sub-section (3), *ante*, p. 110.

(8) Where the county council are authorised to borrow any money on loan they may raise such money either as one loan or several loans, and either by stock issued under this Act or by debentures or annuity certificates under the Local Loans Act, 1875, and the Acts amending the same, or, if special reasons exist for so borrowing, by mortgage, in accordance with sections two hundred and thirty-six and two hundred and thirty-seven of the Public Health Act, 1875.

38 & 39 Vict. c. 55.

As to the Local Loans Acts, see the note to sub-section (6), *supra*.

As to the issue of county stock, see section 70, *post*.

Sections 236 and 237 of the Public Health Act, 1875, are as follows:—

"Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. to this Act, or to the like effect.

"There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds."

(9) Provided that where a county council have borrowed by means of stock they shall not borrow by way of mortgage except for a period not exceeding five years.

As to borrowing by mortgage, see the last sub-section.

(10) Where the county council borrow by debentures such debentures may be for any amount not less than five pounds. Sect. 69. Sub-s. 10.

Under the Local Loans Act, 1875, section 5, a debenture under that Act shall not be issued for a sum less than the sum prescribed by a local Act, or where no sum is prescribed for a sum less than 20*l.*

(11) The provisions of this section which authorise advances in aid of the emigration or colonisation of inhabitants of the county, and borrowing for those advances, except the provisions respecting the total debt, shall extend to the councils of boroughs mentioned in the Third Schedule to this Act.

These are the county boroughs to which sections 31—34, *ante*, apply.

(12) Nothing in this section shall be taken to empower the Cheshire County Council to borrow on the security of any revenue estimated to accrue from the surplus funds of the River Weaver Navigation.

70. (1) County stock may be created, issued, transferred, dealt with, and redeemed in such manner and in accordance with such regulations, as the Local Government Board may from time to time prescribe. Issue of county stock.

These regulations will, no doubt, be prescribed at some future date. See sub-section (3), *infra.*

(2) Without prejudice to the generality of the above power, such regulations may provide for the discharge of any loan raised by such stock, and in the case of consolidation of debt for extending or varying the times within which loans may be discharged, and may provide for the consent of limited owners and for the application of the Acts relating to stamp duties and to cheques, and for the disposal of unclaimed dividends, and may apply for the purposes of this section, with or without modifications, any enactments of the Local Loans Act, 1875, and the Acts amending the same, and of any Act relating to stock issued by the Metropolitan Board of Works, or by the corporation of any municipal borough.

The Local Loans Acts are 38 & 39 Vict. c. 83, and 48 & 49 Vict. c. 30.

The Acts relating to borrowing by the Metropolitan Board of Works are enumerated in the note to section 40, sub-section (8), *ante*, p. 74.

As to the issue of metropolitan consolidated stock, see 32 & 33 Vict. c. 102; 33 & 34 Vict. c. 24; 34 & 35 Vict. c. 47; 38 & 39 Vict. cc. 36, 65; 43 & 44 Vict. c. 20; 48 & 49 Vict. c. 50; 50 & 51 Vict. c. 31; 51 & 52 Vict. c. 40.

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(3) Such regulations shall be laid before each House of Parliament for not less than thirty days during which such House sits, and if either House during such thirty days resolves that such regulations ought not to be proceeded with the same shall be of no effect, without prejudice nevertheless to the making of further regulations.

(4) If no such resolution is passed it shall be lawful for Her Majesty by Order in Council to confirm such regulations, and the same, when so confirmed, shall be deemed to have been duly made and to be within the powers of this Act, and shall be of the same force as if they were enacted in this Act.

Audit of accounts of county council.

71. (1) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by this Act, and be in the form for the time being prescribed by the Local Government Board.

As to the local financial year, see section 73, *post*.

(2) The provisions of the Municipal Corporations Act, 1882, with respect to the return to the Local Government Board of the accounts of a council of a borough and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof, shall apply to the accounts of a county council, and of the treasurer and officers of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts.

The provisions of the Municipal Corporations Act, 1882, here referred to are sections 26—28 and section 233. They are set out *post*.

(3) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections two hundred and forty-seven and two hundred and fifty of the Public Health Act, 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and

38 & 39 Vict. c. 55.

accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the First Schedule to the District Auditors Act, 1879, shall be modified in manner described in the Second Schedule to this Act.

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42 & 43 Vict. c. 6.

Sections 247 and 250 of the Public Health Act, 1875, are as follows:—

"Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed; namely,

(1) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board:

(2) There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time to time appoint, together with his expenses of travelling to and from the place of audit:

(3) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever.

(4) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts, mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds.

(5) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

Sect. 71. NOTE SUB-S. 3.

(6) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances:

(7) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(8) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors:

(9) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person:

(10) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

"Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act."

"The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents, and consequences as in the case of such last-mentioned accounts."

The Acts relating to audit by district auditors are the 7 & 8 Vict. c. 101, ss. 32—36; 11 & 12 Vict. c. 91, ss. 4—9; 12 & 13 Vict. c. 103, ss. 9, 11; 29 & 30 Vict. c. 113, ss. 5—7; 42 Vict. c. 6. All these Acts will be found in the Appendix to *Lumley's Public Health*.

The county accounts will no longer be audited by the county auditors, and the provisions of the Municipal Corporations Act, 1882, relating to borough auditors, do not apply to county councils. (See section 75, sub-section (16), *post.*) Sect. 71. NOTE SUB-S. 3.

As to the modification of the schedule to the District Auditors Act, 1879, see the Second Schedule to this Act and the notes thereto.

Adaptation of Part V. of 45 & 46 Vict. c. 50, as to corporate property and liabilities.

72. After the appointed day the Local Government Board shall exercise, as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities, as respects the approval of loans and of the alienation of property, and other matters therein mentioned, and that Part shall, as respects any transactions commenced after the appointed day, be construed as if "Local Government Board" were throughout that Part substituted for "Treasury."

This is an amendment of Part V. of the Municipal Corporations Act, 1882. That part is not (save as to one section) incorporated with this Act, and the provision in the text has no real connection with the purposes of this Act.

Local Financial Year and Annual Budget.

Fixing of local financial year and consequent adjustments.

73. (1) After the appointed day, not being more than three years after the passing of this Act, the local financial year shall be the twelve months ending the thirty-first day of March, and the accounts of the receipts and expenditure of every county council shall be made up for that year, but until the appointed day the local financial year shall be the twelve months ending the twenty-fifth day of March, and the said accounts shall be made up for that year.

As to the "appointed day," see section 109, *post.*

At present the local financial year ends on the 25th March. After the appointed day it will end on the 31st March in each year.

As to the making up of the accounts of county councils, see section 71, *ante.*

(2) All enactments relating to accounts of local authorities, or the audit thereof, or to returns touching their receipts and expenditure, or to meetings, or other matters, shall be modified so far as is necessary for adapting them to the provisions of this section, and the Local Government Board shall from time to time give such orders and make such arrangements as appear to the Board to be necessary or proper for effecting such adaptation, and giving effect to the provisions of this section.

Sect. 74. Sub-S. 1.

Annual budget of county councils.

74. (1) At the beginning of every local financial year, every county council shall cause to be submitted to them an estimate of the receipts and expenses of such council during that financial year, whether on account of property, contributions, rates, loans, or otherwise.

After the appointed day the local financial year will begin on the 1st April in each year. See section 73, *ante*.

(2) The council shall estimate the amount which will require to be raised in the first six months, and in the second six months of the said financial year by means of contributions.

This sub-section contemplates the making of two county rates, one at the beginning of each half year.

(3) If at the expiration of the first six months of such financial year it appears to the council that the amount of the contribution or rate estimated at the commencement of the year will be larger than is necessary or will be insufficient, the council may revise the estimate and alter accordingly the amount of the contribution or rate.

PART V.

Supplemental.

Application of Acts.

Application of 45 & 46 Vict. c. 50 to county councils and this Act.

47 & 48 Vict. c. 70.

75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely, Part Two, Part Three, Part Four (as amended by the Municipal Elections (Corrupt Practices) Act, 1884), section one hundred and twenty-four, in Part Five, Part Twelve, Part Thirteen, the Second Schedule, Part Two, and Part Three of the Third Schedule, and Part One of the Eighth Schedule shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same, in such terms and with such modifications as are necessary to make them applicable to

the said councils and their chairmen, members, committees, and officers, and to the other provisions of this Act. Sect. 75.

The provisions of these incorporated Acts are set out *post*, and in the notes to each section it has been attempted to indicate its application to county councils as modified by the provisions of this Act.

Provided as follows:—

(1) In a year in which county councillors are elected, the elections of those councillors, and of councillors of a borough, shall be conducted together.

This will not apply to the first election of county councillors, which is to take place in the month of January next. It will, however, apply to subsequent elections. County councillors are to be elected every third year, and in that year the election of county councillors for the divisions comprised in the borough will be conducted at the same time as the election of the borough councillors on the first of November.

(2) Such person as the county council may appoint shall be the returning officer for the election of county councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council.

The returning officer will be returning officer for the entire administrative county. The council will not appoint a returning officer for each division corresponding to the alderman appointed for each ward of a borough. As to the returning officer at the first election, see section 103, *post*.

(3) The returning officer, without prejudice to any other power, may by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any such councillor, and may by himself or such deputy exercise any powers and do any things which a returning officer is authorised or required to exercise or do in relation to such election, and shall, for the purposes of the election, have all the powers of the sheriff.

It will be necessary to appoint a deputy for each division. It is difficult to understand the reference to the sheriff. The election of county councillors will resemble a municipal election, with which the sheriff as such has nothing to do. The sheriff is, however, to be the returning officer at the first election. See section 103, *post*.

(4) A reference in this Act, or in the enactments applied by this Act, to the returning officer or to the mayor or to the alderman shall, so far as relates to the election of any such councillor, be construed to refer to the returning officer, and any such deputy as above mentioned.

These references have been carefully noticed under the several sections.

Sect. 75. Sub-s. 5.

(5) A reference in the said enactments to the town clerk so far as respects the election of any such councillor shall be construed to refer to the returning officer or his deputy, and as respects matters subsequent to the election, shall be construed to refer to the clerk of the county council.

These references have been carefully noticed under the several sections. The returning officer will perform all the duties of the town clerk under the Municipal Corporations Act, 1882, before and during the election. After the election the duties of the town clerk are to be performed by the returning officer. Thus the returning officer must provide nomination papers under sched. 3, part 2, rule 6; but a copy of an election petition must be sent to the clerk of the council under section 88.

(6) In a borough the returning officer for the purpose of the election of councillors of the borough shall continue to be the same as heretofore, and where an electoral division of the county is co-extensive with or wholly comprised in such borough, shall at the election in such division of a councillor of the county council act as the returning officer in pursuance of a writ directed to him from the county returning officer, and so far as respects that election shall follow the instructions of, and return the names of the persons elected to the county returning officer in like manner as if he were a deputy returning officer, and any decision of an objection shall be subject to revision by the county returning officer accordingly, and a reference in the said enactments to the town clerk shall, as respects the borough, be construed to refer to the town clerk.

See the note to section 53 of the Municipal Corporations Act, 1882.

In a borough divided into wards there will be an alderman appointed as returning officer in each ward. It is not clear, therefore, which alderman will be appointed under this sub-section, when a division includes two or more wards. Probably the county returning officer will have power to select which of the aldermen is to act.

The provision as to the revision of decisions by the returning officer is singular. The deputy will, by sub-section (3), have all the power of the returning officer, and will no doubt decide objections under the Municipal Corporations Act, 1882, sched. 3, part 2. But it is nowhere provided that the decision of a deputy shall be subject to revision, and it would appear that if there can be any such revision, it is limited to the case provided for by this sub-section.

(7) Some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town clerk's office, and, as respects the hearing of objections to nomination papers, for the town hall, but such place shall, if the electoral division is the whole or part of an urban

district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division. Sect. 75. SUB-S. 7.

In a borough nomination papers will be delivered to the town clerk, at his office, as heretofore.

In a division of a county not in a borough, the nomination papers will be delivered to the returning officer (see sub-section 5, *supra*), at some place fixed by him.

As to the application of section 232 of the Municipal Corporations Act, 1882, which deals with the fixing of notices on the town hall, see the note to that section, *post*.

(8) The returning officer shall forthwith, after the election of county councillors for the county, return the names of the persons elected to the clerk of the county council.

At the first election this notice will be sent to the clerk of the peace under section 103 (5), *post*.

(9) The period between the nomination and election may be such period, not exceeding six days, as the returning officer may fix.

As to the day of nomination, see section 100, *post*.

It is difficult to see the object of this provision. The election will (after the first election) be on the 1st November in each year, and there is not at present any limit to the period which may elapse between nomination and election, except that the day of nomination (see section 100, *post*) must be at least four days before the day of election. This period must now be at least four days, but it must not exceed six days.

(10) An outgoing alderman shall not, as alderman, vote in the election of a chairman.

This is an amendment of section 60 (3) of the Municipal Corporations Act, 1882. The meaning of the words "as alderman" are obscure. Perhaps they are intended to meet a case where an outgoing alderman has in the meantime been elected a councillor, and therefore votes as councillor.

(11) The hours of the poll shall be those fixed by the Elections (Hours of Poll) Act, 1885. 48 & 49 Vict. c. 10.

The hours fixed by the Act are from 8 a.m. to 8 p.m. See the note to the Municipal Corporations Act, 1882, section 58, *post*.

(12) Section eleven of the Municipal Corporations Act, 1882, with respect to the qualification of a county councillor by reason of his being entered in the separate non-resident list, shall include, for the purposes of this Act, all persons entered in such separate list in any municipal borough by reason of occupation of property in the borough, and all persons entered in such separate list for any part of a

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county not in a municipal borough by reason of the occupation of property in that part.

See the section referred to, *post*.

By the provision in the text a person will be entitled to be elected a councillor if he is entered in the county separate non-resident list, or in the corresponding list for any borough under section 49 of the Municipal Corporations Act, 1882.

(13) The seventh of November shall be substituted for the ninth of November as the ordinary day of election of the chairman and of county aldermen, and as the day for holding a quarterly meeting of the county council.

This provision was inserted to avoid the holding of the quarterly meeting of county and borough councils on the same day. At this meeting the chairman and county aldermen will be elected.

(14) Ten days shall be substituted for five days in section thirty-four of the Municipal Corporations Act, 1882, as the time within which a person elected to a corporate office is to accept that office, and twelve months shall be substituted for six months in section thirty-nine of the said Act, as the period of absence which disqualifies an alderman or councillor.

See the sections referred to, *post*.

(15) The quorum of the council shall be one-fourth of the whole number of the council, and one-fourth shall, for the purposes of this section, be substituted for one-third in paragraph ten of the second schedule to the Municipal Corporations Act, 1882.

See the paragraph referred to, *post*.

(16) Nothing in the Municipal Corporations Act, 1882, as applied by this section—

(*a*) Shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner; or,

This prevents the application to counties of the Municipal Corporations Act, 1882, section 221, *post*.

(*b*) Shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boundaries or the alteration of wards or borough auditors, nor any of the following provisions, namely, sub-section five of section fifteen, section sixteen, section two hundred and fifty-one, or section two hundred and fifty-seven; or

The provisions of the Municipal Corporations Act, 1882, as to boundaries are contained in sections 228—229; as to alteration of wards, in section 30;

as to borough auditors, in sections 25, 27, 37, 41, 42, 62. Section 15, sub-section (5), provides that the mayor shall have precedence in all places in the borough; section 16 relates to the appointment of deputy-mayor; section 251 contains a saving for local Acts; and section 257 contains a saving for the universities. Sect. 75. NOTE SUB-S. 16.

(*c*) Shall render any person elected to a corporate office without his consent to his nomination being previously obtained, liable to pay a fine on non-acceptance of office, or render a chairman or deputy-chairman disqualified as such by reason of absence; or

This provision modifies the Municipal Corporations Act, 1882, sections 34 and 39, *post*.

(*d*) Shall authorise or require a returning officer to hold an election of a councillor to fill a casual vacancy in the representation of an electoral division where the vacancy occurs within six months before the time fixed by this Act for a new election of a councillor to represent such electoral division; or

This modifies section 40 of the Municipal Corporations Act, 1882, *post*. It provides in effect that a casual vacancy which occurs within six months previously to a triennial election of county councillors shall not be filled up.

(*e*) Shall apply to a county council section seventeen of the said Act with respect to the town clerk, nor, unless the county council so resolve, section eighteen respecting the treasurer, but, if the county council so resolve, section eighteen shall supersede the existing enactments with respect to the county treasurer; or

See the section referred to, *post*.
As to the appointment of county treasurer, see section 3, *ante*, p. 8.

(*f*) Shall require the acts and proceedings of the standing joint committee of the county council and quarter sessions to be submitted to the county council for their approval; or

Under section 22 (2) of the Municipal Corporations Act, 1882, the acts of committees must be submitted to the council for their approval. The text provides that such approval shall not be necessary in the case of the acts and proceedings of the standing joint committee, as to which see section 30, *ante*, p. 50.

(*g*) Shall prevent the use of schools and public rooms for the purpose of taking the poll at elections under this Act, but section six of the Ballot Act, 1872, shall apply in the case of elections under this Act, and the returning 35 & 36 Vict. c. 33.

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officer may, in addition to using such rooms free of charge for taking the poll, use the same free of charge for hearing objections to nomination papers and for counting votes.

Section 6 of the Ballot Act, 1872, provides that a returning officer may use, free of charge, for the purpose of taking the poll at an election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid. This section does not apply to municipal elections (see the Municipal Corporations Act, 1882, sched. 3, part 3, rule 1, *post*). It will, however, apply to elections of county councillors, for the purposes of taking the poll, hearing objections, and counting votes.

(17) All costs properly incurred in relation to the holding of elections of councillors of county councils, so far as not otherwise provided for by law, shall be paid out of the county fund as general expenses.

As to whatar egeneral expenses, see section 68, sub-section (2), *ante*, p. 110.

38 & 39 Vict. c. 84.
48 & 49 Vict. c. 62.

(18) The said costs shall not exceed those allowed by Part I. of the First Schedule to the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act, 1885, or by such scale as the county council may from time to time frame.

The following is the text of Part I. of the Schedule to the 38 & 39 Vict. c. 84. The only amendment effected in it by the 48 & 49 Vict. c. 62, is that by section 4 of that Act it shall be lawful in any county constituency in England for the returning officer to charge four guineas for each presiding officer, and thirty shillings for each clerk, at a polling station.

FIRST SCHEDULE.

Charges of Returning Officers.

The following are the maximum charges to be made by the returning officer, but the charges are in no case to exceed the sums actually and necessarily paid or payable.

Part I.—*Counties and District or Contributory Boroughs.*

This part of this Schedule applies to an election for a county or for either of the boroughs of Aylesbury, Cricklade, Monmouth, East Retford, Stroud, and New Shoreham, or for any borough or burgh consisting of a combination of boroughs, burghs, or towns.

	£	s.	d.
For preparing and publishing the notice of election	2	2	0
For preparing and supplying the nomination papers	1	1	0
For travelling to and from the place of nomination, or of declaring the poll at a contested election, per mile.	0	1	0

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	£ s. d.
For hire or necessary fitting up of rooms or buildings for polling, or damage or expenses by or for use of such rooms or buildings.	The necessary expenses, not exceeding at any one polling station the charge for constructing and fitting a polling station.
For constructing a polling station, with its fittings and compartments, in England. And in Ireland the sum or sums payable under the provisions of the 13 & 14 Vict. c. 68, and 35 & 36 Vict. c. 33. In Ireland the returning officer shall use a court house where one is available as a polling station, and his maximum charge for using and fitting the same shall in no case exceed three pounds three shillings.	7 7 0
For each ballot box required to be purchased - -	1 1 0
For the use of each ballot box, when hired - -	0 5 0
For stationery at each polling station - - -	0 10 0
For printing and providing ballot papers, per 1,000 -	1 10 0
For each stamping instrument - - - - -	0 10 0
For copies of the register - - - - - -	The sums payable by statute for the necessary copies.
For each presiding officer - - - - - -	3 3 0
For one clerk at each polling station where not more than 500 voters are assigned to such station.	1 1 0
For an additional clerk at a polling station for every number of 500 voters, or fraction thereof beyond the first 500 assigned to such polling station.	1 1 0
For every person employed in counting votes, not exceeding six such persons where the number of registered electors does not exceed 3,000, and one for every additional 2,000 electors.	1 1 0
For making the return to the clerk of the Crown -	1 1 0
For the preparation and publication of notices (other than the notice of election).	Not exceeding for the whole of such notices 20*l.*, and 1*l.* for every additional 1,000 electors above 3,000.
For conveyance of ballot boxes from the polling stations to the place where the ballot papers are to be counted, per mile.	0 1 0
For professional and other assistance in and about the conduct of the election.	In a contested election not exceeding 25*l.*, and an additional 3*l.* for every 1,000 registered electors or fraction thereof above 3,000 and up to 10,000, and 2*l.* for every 1,000 or fraction thereof above 10,000. In an uncontested election, one-fifth of the above sums.

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For travelling expenses of presiding officers and clerks, per mile.	£ *s.* *d.* 0 1 0
For services and expenses in relation to receiving and publishing accounts of election expenses, in respect of each candidate.	2 2 0
For all other expenses - - - - - -	In a contested election, not exceeding 10*l.*, and an additional 1*l.* for every 1,000 electors or fraction thereof above 1,000. In an uncontested election, nil.

NOTE.—*Travelling expenses are not to be allowed in the case of any person unless for distances exceeding two miles from the place at which he resides.*

(19) Sections four, five, six, and seven of the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed, and of one month for the period of fourteen days within which application may be made for taxation.

49 & 50 Vict. c. 57.

The incorporated sections are set out below.

The expenses of the returning officer are payable by the county council under sub-section (17), *supra*, not by the candidate.

"4. Within twenty-one days after the day on which the return is made of the persons elected at the election, the returning officer shall transmit to every candidate or other person from whom he claims payment either out of any deposit or otherwise of any charges in respect of the election, or to the agent for election expenses of any such candidate, a detailed account showing the amounts of all the charges claimed by the returning officer in respect of the election, and the share thereof which he claims from the person to whom the account is transmitted. He shall annex to the account a notice of the place where the vouchers relating to the account may be seen, and he shall at all reasonable times and without charge allow the person from whom payment is claimed, or any agent of such person, to inspect and take copies of the vouchers.

"The returning officer shall not be entitled to any charges which are not duly included in his account.

"If the person from whom payment is claimed objects to any part of the claim, he may, at any time within fourteen days from the time when the account is transmitted to him, apply to the court as defined in this section for a taxation of the account, and the court shall have jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer and to give and enforce judgment for the same as if such judgment were a judgment in an action in such court, and with or without costs at the discretion of the court.

"The court for the purposes of this Act shall be in the city of London the Lord Mayor's Court, and elsewhere in England the County Court, and in Ireland the Civil Bill Court, having jurisdiction at the place of nomination for the election to which the proceedings relate. Sect. 75. NOTE SUB-S. 19.

"The court may depute any of its powers or duties under this Act to the registrar or other principal officer of the court.

"Nothing in this section shall apply to the charge of the returning officer for publication of accounts of election expenses.

"5. Every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer for the purposes of an election, except for publication of accounts of election expenses, shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

"Where application is made for taxation of the accounts of a returning officer, he may apply to the court as defined in this Act to examine any claim transmitted to him by any person in pursuance of this section, and the court, after notice given to such person, and after hearing him, and any evidence tendered by him, may allow or disallow, or reduce the claim objected to, with or without costs, and the determination of the court shall be final for all purposes, and as against all persons.

"6. In any case in which the fourteenth section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court upon taxation of his accounts shall have regard to the provisions of this section.

"7. There shall be added to every notice of election to be published under the provisions of the Ballot Act, 1872, the notification contained in the second schedule to this Act with respect to claims against returning officers."

SECOND SCHEDULE.

1. NOTIFICATION TO BE ADDED TO THE NOTICE OF ELECTION.

Take notice, that by the Parliamentary Elections (Returning Officers) Act, 1875, it is provided that every person having any claim against a returning officer for work, labour, materials, services, or expenses in respect of any contract made with him by or on behalf of the returning officer, for the purposes of an election (except for publications of account of election expenses), shall, within fourteen days after the day on which the return is made of the person or persons elected at the election, transmit to the returning officer the detailed particulars of such claim in writing, and the returning officer shall not be liable in respect of anything which is not duly stated in such particulars.

49 & 50 VICT. CAP. 57.

An Act to amend the provisions of the Parliamentary Elections (Returning Officers) Act, 1875. [25th June, 1886.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The judge or officer by whom any account or claim is taxed or examined under the Parliamentary Elections (Returning Officers) Act, 1875 (herein called the "principal Act"), shall deliver to the returning officer, and to the other party to the taxation or examination, a certificate showing the items

Sect. 75. NOTE SUB-S. 19. and amounts allowed or disallowed, with a copy of any order or judgment made thereon.

Either party may, within seven days of the delivery to him of such certificate, give notice in writing to the said judge or officer of intention to appeal, specifying in the notice the items and amounts in respect of which he intends to appeal.

The said judge or officer shall thereupon forthwith transmit to the prescribed taxing officer of the superior court the said account or claim, with any vouchers relating thereto, the certificate and the notice of appeal, and such taxing officer shall forthwith proceed to review the taxation or examination in the usual manner, or in such manner as may be prescribed, and shall, if required, receive evidence in relation to the matters in dispute, and may confirm or vary the certificate, and direct by whom all or any part of the costs of review are to be paid, and shall return the certificate as confirmed or varied to the said judge or officer with any such direction, and effect shall be given to a certificate as so confirmed or varied, and to any such direction, as if the same had been a judgment of the court as defined in the principal Act.

Any taxation or review of taxation under this Act shall be subject to appeal to the superior court in like manner as any ordinary taxation of costs is now subject.

In this Act "superior court" means in England the Queen's Bench Division of the High Court of Justice in England, and in Ireland the Common Pleas Division of the High Court of Justice in Ireland. "Prescribed" means prescribed by rules of the superior court in England or Ireland, as the case may be.

2. This Act may be cited as the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886, and shall be read as one with the principal Act.

The following cases have been decided upon the above sections :—

It was held that where the accounts of a returning officer had been taxed by the registrar of a county court, under 38 & 39 Vict. c. 84, s. 4, the county court judge had no discretion to review the registrar's taxation. *Reg.* v. *Lambeth* (*County Court, Judge of*), 17 Q. B. D. 96. But see now 49 & 50 Vict. c. 57, *supra*. An application made within the specified time to the registrar of the county court when the judge is not sitting is properly made within 38 & 39 Vict. c. 84, s. 4. *Reg.* v. *Bloomsbury* (*County Court, Judge of*), 17 Q. B. D. 788 ; 55 L. J. Q. B. 443 ; 56 L. T. (N.S.) 321 ; 51 J. P. 212.

A returning officer at a parliamentary election is not entitled to remuneration for personal services rendered by him in the conduct of the election, under the heading of professional or other assistance, which he has not, as a matter of fact, employed. *Ex parte Walker, re Shoreditch* (*Hoxton Division*) *Parliamentary Election*, 1886, 56 L. T. (N.S.) 529.

At a parliamentary election the high sheriff was the returning officer, the duties being performed on his behalf by a firm of solicitors, one of whom was under-sheriff. The returning officer's charges included a charge for professional assistance rendered to him by the under-sheriff's firm, which was disallowed on taxation, on the ground that no detailed account was sent in to the returning officer within fourteen days of the return, as required by section 5 of the Returning Officers Act, 1875. *Held*, that the charge was wrongly disallowed on the above ground, the section not being applicable as between the returning officer and the candidates to charges made for work done for the returning officer by his own agents. The right of a returning officer under section 2 of the same Act to be paid his reasonable charges and expenses is not limited to such charges only as have been vouched under sections 4 and 5 of the Act, nor is a charge made by him to be disallowed merely because in the account sent in by him to candidates it appears under a wrong heading. A returning officer is not limited to charging for such services and expenses as come *verbatim et literatim* within the descriptions of the Schedule to the Act, if they are services and expenses of one of the kinds mentioned in the Schedule. A charge for storing ballot boxes from one election to another, in

order to avoid the expense of procuring fresh ones, was therefore allowed, although no such charge is expressly provided for in the Schedule to the Act. *In re Election for South-Eastern Division of Essex*, 19 Q. B. D. 252; 56 L. J. Q. B. 365; 57 L. T. (N.S.) 104; 36 W. R. 44. Sect. 75. NOTE SUB-S. 19.

(20) A county council shall, on the request of the returning officer, prior to a poll being taken at any election of a councillor of such council, advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require.

This is a useful and necessary provision, for the expenses of holding a number of elections simultaneously throughout a county must necessarily be heavy.

(21) The meeting of a county council, or of any committee thereof, may be held at such place either within or without their county, as the council from time to time direct.

As to the first meeting after the first election of a county council, see section 105, sub-section (2), *post*.

76. (1) The provisions of section four of the County Electors Act, 1888, with respect to the framing of the lists and register of voters in parts shall extend to parishes situate within a parliamentary borough. Amendment of 51 & 52 Vict. c. 10.

The County Electors Act, 1888, section 4, sub-section (2), provides that in the construction of the Registration of Electors Acts for the purposes of their application to a parish not situate in a municipal borough, there shall be made the variations following, and such other variations as may be necessary for carrying into effect the application, that is to say :—

"(*e*) Where such parish is not within a parliamentary borough, section 21 of the Parliamentary and Municipal Registration Act, 1878, shall not apply, and the lists and register of voters shall be made out alphabetically, but shall be framed in parts for polling districts and electoral divisions and for urban districts, and for wards of urban and rural districts in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts and elections in urban districts, and as electoral division or ward lists."

This provision will now apply to parishes within as well as without a parliamentary borough. But it is to be observed that the sub-section only relates to parishes within a municipal borough.

(2) In the provisions of section four of the said Act with respect to making out the lists of voters according to the order in which the qualifying premises appear in the rate book, the county authority shall mean the county council.

The following is the provision in section 4 above referred to :—

"(3) Notwithstanding anything in this Act contained, where a municipal borough or an urban district is co-extensive with any electoral division or divisions of a parliamentary county, the lists of voters may be directed by the county authority to be made out according to the order in which the qualifying premises appear in the rate book, and section twenty-one of the Parliamentary

Sect. 76. NOTE SUB-S. 2. and Municipal Registration Act, 1878, shall apply to such borough or urban district, and where lists of voters are so made out nothing in this Act shall require such part of the county register as consists of these lists to be arranged alphabetically."

(3) The names of the parliamentary electors and county electors in the lists in each polling district may be numbered consecutively, and such portion of those lists as consists of the names of parliamentary electors may be taken to form the register for the purpose of parliamentary elections, and such portion of those lists as contains the names of county electors may be taken to form the register of county electors.

In the lists of occupation voters divisions 1 and 3 will contain the names of the county electors, and divisions 1 and 2 will contain the names of the parliamentary voters.

(4) For the purpose of the provisions of the Acts relating to the appointment of revising barristers, and of section nine of the County Electors Act, 1888, the county of Surrey and such portion of the county of London as is situate south of the Thames shall be deemed to be separate counties forming part of the south-eastern circuit; and such portion of the administrative county of London as is situate north of the Thames shall be deemed to form part of the county of Middlesex; and the county of Middlesex, inclusive of that portion, shall be deemed to be a separate county on a circuit; but any sum payable by the London county council in respect of either of the said portions of the county, shall be paid as for a general county purpose.

Section 9 of the County Electors Act is as follows :—

"Every barrister appointed to revise any list of voters under the Parliamentary Voters Registration Act, 1843, shall be paid the sum of two hundred and fifty guineas by way of remuneration to him, and in satisfaction of his travelling and other expenses, and every such barrister, after the termination of his last sitting, shall forward his appointment to the Commissioners of Her Majesty's Treasury, who shall make an order for the payment of the above sum to every such barrister.

"The maximum amount to be paid to an additional barrister in pursuance of the Revising Barristers Act, 1886, shall not exceed the amount authorised by this section to be paid to a revising barrister.

"The sums so paid to a revising barrister or an assistant barrister shall be payable partly out of moneys provided by Parliament and partly by the county authorities as hereinafter mentioned.

"(1) There shall be annually paid by the county authority of every county out of the county fund into Her Majesty's Exchequer such sum as the Treasury certify to be one-half of the cost incurred for the payment of revising barristers at the then last revision of the lists of parliamentary electors, burgesses, and county electors in that county.

"(2) The Treasury shall yearly ascertain the total cost of the revising barristers appointed for all the counties and boroughs on any circuit, and shall divide one-half of such cost among the counties comprised in such circuit in proportion to the number of burgesses and county electors in each county, and certify the amount which under such

apportionment is due under this section from each county. The Treasury may vary such certificate if they think fit, but unless it is so varied the certificate shall be final. Sect. 76. Note Sub-s. 4.

"(3) So much of any Act as requires a payment out of the borough fund of any borough to a revising barrister, in respect of the revision of the burgess lists, shall be repealed, without prejudice to any payment or liability previously made or incurred."

The text amends the provision as to the revising barristers for Middlesex and Surrey.

As to general county purposes, see section 68, *ante*, p. 110.

(5) The provisions of section eleven of the County Electors Act, 1888, with respect to the payment of the sums therein mentioned shall apply to the payment of the said sums in the year one thousand eight hundred and eighty-eight in like manner as if a county authority had not been established under this Act.

Section 11 of the County Electors Act is as follows:—

"(1) In the event of a county authority being established under any Act of the present session, the provisions of this Act with respect to county authority, county, and county fund shall refer to the said county authority and to the county and county fund of such authority, and in case of any borough which, for the purposes of the said Act, is a county of itself, to the council of the borough and to the borough and borough fund.

"(2) In the event of a county authority not being established under any Act during the present session, the sums directed by this Act to be paid out of and into the county fund shall be paid by or under the direction of the local authority of every county quarter sessional area within the meaning of the Registration Act, 1885, in like manner as expenses or receipts of the clerk of the peace for such area under the Registration of Electors Acts, and by and under the direction of the council of every municipal borough which is also a parliamentary borough out of and into the borough fund, and the amount to be paid for revising barristers shall be apportioned between such quarter sessional areas and boroughs upon the principles above mentioned in this Act."

As to the county fund, see section 68, *ante*, p. 110.

(6) It is hereby declared that nothing in section twelve of the County Electors Act, 1888, applies to any person occupying property within a borough. 51 & 52 Vict. c. 10.

Section 12 of the Electors Act is as follows:—

"A list of persons occupying property in a county, and residing within fifteen miles, but more than seven miles from the county, shall be made out in accordance with section forty-nine of the Municipal Corporations Act, 1882, and that section shall apply as if it were herein re-enacted, with the substitution of 'county' for 'borough,' and of 'county elector' for 'burgess,' and of 'clerk of the peace' for 'town clerk.'"

The effect of this amendment is stated in the notes to section 49 of the Municipal Corporations Act, 1882, *post*.

(7) It shall be lawful for Her Majesty the Queen, by Order in Council, from time to time to alter the instructions, precepts, notices, and forms under the Registration of Electors Acts, in such manner as appears to Her Majesty necessary for carrying into effect this Act and the County Electors Act, 1888, and any other

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Act for the time being in force amending or affecting the Acts mentioned in this sub-section, and the instructions, precepts, notices, and forms specified in any such Order in Council shall be observed and be valid in law, and clerks of the peace, and town clerks, and other officers shall act accordingly.

This provision is supplemental to that contained in section 13 of the County Electors Act, which is as follows :—

"All precepts, notices, and forms required for the purposes of the Registration of Electors Act, shall be altered in such manner as may be declared by Her Majesty in Council to be necessary for carrying into effect this Act, and clerks of the peace and town clerks shall alter their precepts and forms accordingly, and if clerks of the peace or town clerks have sent out precepts to the overseers before the passing of this Act, they shall send to them such supplemental precepts as are necessary or desirable for instructing them to carry into effect this Act."

(8) The provisions of section six of the said County Electors Act, 1888, requiring the statement of the barrister for the purpose of an appeal to be made not less than four days before the first day of the Michaelmas sittings shall not apply in the year one thousand eight hundred and eighty-eight.

The provisions of section 6 of the County Electors Act, above referred to, are as follows :—

"(1) In sections sixty-two and sixty-three of the Parliamentary Voters Registration Act, 1843 (relating to appeals from revising barristers in England), 'the Michaelmas sittings of the High Court of Justice' shall be substituted for 'the Michaelmas term,' and forthwith after the fourth day of the Michaelmas sittings a court or courts shall sit for the purpose of hearing such appeals, and those appeals shall be heard and determined continuously and without delay, and any statement by the barrister for the purpose of any such appeal made in pursuance of section forty-two of the said Act may be made at any time within ten days after the conclusion of the revision, so that it be made not less than four days before the first day of the said Michaelmas sittings, and the statement need not be read in open court, but shall be submitted to the appellant, who, if he approves the same, shall sign the same as directed by the said section, and return the same to the barrister."

It has been considered that a detailed consideration of the County Electors Act and of these amendments is beyond the scope of the present work. The reader is referred to Mr. Lushington's work on the Act for a full discussion of the meaning and effect of its provisions.

Residential qualification of county electors in administrative county of London.

77. A person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London, in all respects except that of residence, and is resident beyond seven miles but within fifteen miles of the county, shall be entitled to be registered as a county elector.

This provision is in effect that the persons whose names would in the ordinary way be placed in the separate non-resident list, shall in London be qualified not only to be elected county councillors but to be registered as county electors. There will not, therefore, be any need for a separate non-resident list in the county of London. See the notes to sections 9 and 49 of the Municipal Corporations Act, 1882, *post*.

As to the "administrative county of London," see section 40, *ante*, p. 72.

Sect. 78. SUB-S. 1. — Construction of Acts referring to business transferred.

78. (1) All enactments in any Act, whether general or local and personal, relating to any business, powers, duties or liabilities transferred by or in pursuance of this Act from any authority to a county council, either alone or jointly with the quarter sessions, or to any joint committee, shall, subject to the provisions of this Act, and so far as circumstances admit, be construed as if—

This is a general provision applying all Acts relating to business transferred to the county council as the authority for the execution of these Acts and to the officers of the county council.

As to the standing joint committee, see section 30.

As to other joint committees under this Act, see sections 5 (3), 33 (2), 34 (5), 75, 78, 81, 82, and 111.

(*a*) Any reference therein to the said authority or to any committee or member thereof or to any meeting thereof (so far as it relates to the business, powers, duties, or liabilities transferred) referred to the county council or to a committee or member thereof or to a meeting thereof, as the case requires, and as if—

(*b*) A reference to any clerk or officer of such authority referred to the clerk or officer of a county council or committee thereof as the case requires,

and all the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

(2) Provided that the transfer of powers and duties enacted by this Act shall not authorise any county council or any committee or member thereof—

(*a*) To exercise any of the powers of a court of record; or

(*b*) To administer an oath; or

(*c*) To exercise any jurisdiction under the Summary Jurisdiction Acts, or perform any judicial business, or otherwise act as justices or a justice of the peace;

but this enactment shall be without prejudice to the position of the chairman of the county council as justice of the peace during his term of office.

This proviso preserves to justices all their judicial powers and authority. See also sections 8, 9, *ante*, p. 15.

As to the authority of the chairman as a justice, see section 2, sub-section (5), *ante*, p. 4.

(3) Where under any such enactment as in this section mentioned, any powers, duties, or liabilities are to be exercised or discharged after any presentment or in any particular manner, or at any particular meeting, or subject to any other conditions, the

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county council may, by the standing orders for the regulation of their proceedings, provide for the exercise and discharge of those powers, duties, and liabilities without any such prior presentment, or in a different manner, or at any meeting of the council fixed by the standing orders, or without such other conditions; and until such standing orders take effect shall exercise and discharge them in the like manner, and at the like time, and subject to the like conditions, so nearly as circumstances admit, and a presentment by a grand jury in relation to any such powers, duties, or liabilities, shall cease to be made otherwise than by way of indictment.

It will be the duty of the county council to make standing orders for the regulation of their business and for the purposes of the foregoing provisions. These standing orders will no doubt be similar to those which have hitherto been made by quarter sessions.

At common law the grand jury or any twelve of them may make presentments for offences, &c., within their own knowledge. Such presentments are delivered into court to the clerk of the peace, who puts them into the form of indictments on which process may issue as in the case of indictments found; *Archbold's Quarter Sessions*, p. 202. The most usual presentment is that a county bridge is out of repair. Presentments by a grand jury are now to cease to be made otherwise than by way of indictment.

(4) For the purposes of this section the expression "authority" means a Secretary of State, the Board of Trade, the Local Government Board, and any Government Department, also any commissioners, conservators, or public body, corporate or unincorporate, specified in a provisional order transferring any powers, duties, or liabilities to the county council, also any quarter sessions and any justices, also the Metropolitan Board of Works, or other local authority mentioned in this Act; and the expression "member of an authority" includes, where the authority are quarter sessions or justices, any justice, and the expression "meeting of an authority" includes a court of quarter sessions and the assembly of justices in special or petty sessions; and the expression "clerk of an authority" includes in relation to any quarter sessions or justices, the clerk of the peace or the clerk to a justice, as the case requires.

This section shall apply as if a joint committee were a committee of the county council.

As to the provisional orders here referred to, see section 10, *ante*, p. 16.

As to the Metropolitan Board of Works, see section 40, sub-section (8), *ante*, p. 74.

As to joint committees, see the note to sub-section (1), *supra*.

Proceedings of Councils and Committees.

Incorporation of county council.

79. (1) The council of each county shall be a body corporate by the name of the county council with the addition of the name of

the administrative county, and shall have perpetual succession and a common seal, and power to acquire and hold land for the purposes of their constitution without license in mortmain. Sect. 79. Sub-s. 1.

(2) All duties and liabilities of the inhabitants of a county shall become and be duties and liabilities of the council of such county.

One result of this sub-section appears to be that the county council will be liable to be indicted for non-repair of a county bridge.

(3) Where any enactment (whether relating to lunatic asylums or bridges, or other county purposes, or to quarter sessions) requires or authorises land to be conveyed or granted to, or any contract or agreement to be made in the name of the clerk of the peace, or any justice or justices, or other person, on behalf of the county or quarter sessions, or justices of the county, such land shall be conveyed or granted to, and such contract and agreement shall be made with, the council of the administrative county concerned.

The conveyance or contract, as the case may be, is to be made directly to or with the council, which is a corporate body; see sub-section (1), *supra*.

80. (1) All payments to and out of the county fund shall be made to and by the county treasurer, and all payments out of the fund shall, unless made in pursuance of the specific requirement of an Act of Parliament or of an order of a competent court, be made in pursuance of an order of the council signed by three members of the finance committee present at the meeting of the council and countersigned by the clerk of the council, and the same order may include several payments. Moreover, all cheques for payment of moneys issued in pursuance of such order shall be countersigned by the clerk of the council or by a deputy approved by the council. Payments out of fund and finance committee of county council.

As to the county treasurer, see section 3 (iii.), *ante*, p. 85, and section 118, sub-section (13), *post*.

The finance committee is appointed under sub-section (3), *infra*.

An order for the payment of money is to be made pursuant to an order of the council directed to the treasurer. It must be signed by three members of the finance committee present at the meeting at which the order is made, and it must be countersigned by the clerk.

The treasurer's cheques issued in pursuance of this order must also be countersigned by the clerk or a deputy approved by the council.

(2) Any such order may be removed into the High Court of Justice by writ of *certiorari*, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

This provision is similar to that contained in the Municipal Corporations Act, 1882, section 141, as to which see *Reg.* v. *Lichfield*, 4 Q. B. 893; *Reg.*

Sect. 80. Note Sub-s. 2.

v. *Greene*, *ib.* 646; *Reg.* v. *Dunn*, 5 Q. B. 959; *Reg.* v. *Prest*, 16 Q. B. 32; *Attorney-General* v. *Wigan*, 1 Kay, 268; *Reg.* v. *Sheffield*, L. R. 6 Q. B. 652; *Reg.* v. *Norwich*, 30 W. R. 752; *Attorney-General* v. *Blackburn*, 57 L. T. (N.S.) 385.

(3) Every county council shall from time to time appoint a finance committee for regulating and controlling the finance of their county; and an order for the payment of a sum out of the county fund, whether on account of capital or income, shall not be made by a county council, except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and (subject to the provisions of this Act respecting the standing joint committee) any costs, debt, or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee.

As to the form of the order, see sub-section (1), *supra*.
As to the joint committee, see section 30, *ante*, p. 50.

(4) The notice of the meeting at which any resolution for the payment of a sum out of the county fund (otherwise than for ordinary periodical payments), or any resolution for incurring any costs, debt, or liability exceeding fifty pounds will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purpose for which they are to be paid or incurred.

The notice of the meeting here referred to is that which must be given pursuant to the Municipal Corporations Act, 1882, schedule 2, rules 5 and 6.

(5) This section shall not apply to county boroughs.

As to county boroughs, see sections 31—34, *ante*.

Appointment of joint committees.

81. (1) Any county council or councils, and any court or courts of quarter sessions, may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

This joint committee is distinct from the standing joint committee appointed under section 30, *ante*, p. 50. It is difficult to suggest any matter in which county councils and quarter sessions can be jointly interested which is not within the jurisdiction of the standing joint committee. The section, however, relates not merely to joint committees of councils and sessions, but of two or more county councils for purposes in which such councils are jointly interested.

(2) Any council or court taking part in the appointment of any joint committee under this section, may from time to time delegate to the committee any power which such council or court might exercise for the purpose for which the committee is appointed.

(3) Provided that nothing in this section shall authorise a council to delegate to a committee any power of making a rate or borrowing any money.

Compare the provisions of section 28, *ante*, p. 49.

(4) Subject to the terms of delegation, any such joint committee shall, in respect of any matter delegated to it, have the same power in all respects as the councils and courts appointing it, or any of them, as the case may be.

(5) The members of a joint committee appointed under this Act shall be appointed at such times and in such manner as may be from time to time fixed by the council or court who appointed them, and shall hold office for such time as may be fixed by the council or court who appointed them, so that where any members of the committee were appointed by the county council, such committee do not continue for more than three months after any triennial election of councillors of such county council.

It is presumed that notwithstanding the concluding words of this sub-section, any member of the committee who has not been re-elected at a triennial election will cease to act as a member of the committee. The committee as a body will, however, continue to act for three months after the election, or until they are re-appointed.

(6) The costs of a joint committee shall be defrayed by the council by whom any of its members were appointed, or if appointed by more than one council in the proportion agreed to by them; and the accounts of such joint committee and their officers shall, for the purposes of the provisions of this Act, be deemed to be accounts of the county council and their officers.

As to the accounts of the county council and their officers, see section 71, *ante*, p. 116.

(7) This section shall apply to the councils of county boroughs in like manner as to councils of administrative counties, and a standing joint committee may be appointed for two or more administrative counties, inclusive of county boroughs, and the members of such joint committee shall be appointed by the several quarter sessions and councils in such proportion and manner as they respectively may arrange, and in default of arrangement as may be directed by a Secretary of State.

The use of the term "standing joint committee" here is confusing. It does not refer to a standing joint committee appointed under section 30 (see the next sub-section).

Sect. 81. Sub-s. 8.

(8) This section shall apply to the standing joint committees.

See the note to the preceding sub-section.

Proceedings of committees.

82. (1) A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority; and subject to such regulations the proceedings and quorum and the place of meeting, whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a second or casting vote.

It would appear that separate regulations must be made for each committee unless general regulations are made, which may, with or without modification, be applied to each committee when appointed.

Observe that the text provides for the casting vote of the chairman.

As to the general appointment of committee, see section 28, *ante*, p. 49.

(2) Every committtee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval.

The council may dispense with the necessity of submitting the acts of the committee for their approval. This provision modifies the Municipal Corporations Act, 1882, section 22 (*post*). Compare section 75, sub-section (16) (*f*), *ante*, p. 125.

(3) In the case of a joint committee the councils and courts appointing the joint committee shall jointly have the powers given by this section, and the provisions of this section shall apply accordingly.

As to joint committees, see section 81, *ante*.

Officers.

Clerk of the peace and of county council.

83. Subject to the provisions of this Act for the protection of clerks of the peace holding office at the passing of this Act, the following provisions shall have effect:—

The provisions of this Act here referred to are contained in section 118, *post*.

(1) The clerk of the peace of a county, besides acting as clerk of the peace of that county, shall also (subject to the provisions of this Act as respects particular counties) be

the clerk of the county council, and in that capacity is referred to in this Act as the clerk of the county council.

The provisions of this Act as to particular counties are contained in the subsequent sub-sections of this section, and in section 118, *post*.

(2) He shall be from time to time appointed by the standing joint committee of the county council and the quarter sessions, and may be removed by that joint committee.

As to the standing joint committee, see section 30, *ante*, p. 50.
As to the removal of the clerk of the peace, see 1 Will. & My. c. 21, ss. 5, 6; 27 & 28 Vict. c. 65.

(3) He shall, subject to the directions of the custos rotulorum or the quarter sessions or the county council, as the case may require, have charge of and be responsible for the records and documents of the county.

The records of the county are to remain in the same custody as heretofore. See section 64, sub-section (1), *ante*, p. 105. Anything necessary for the convenient keeping of records and documents is to be provided by the standing joint committee, section 64, sub-section (3), *ante*, p. 106.

(4) The joint committee may appoint a deputy clerk to hold office during their pleasure, and to act in lieu of such clerk in case of his death, illness, or absence, or in such other cases as may be determined by the joint committee, and wherever the deputy so acts, all things authorised or required to be done by, to, or before the clerk of the peace, or clerk of the county council, may be done by, to, or before any such deputy without prejudice to the appointment of a deputy clerk for the purpose of a second court on the division of the court of quarter sessions for judicial business.

But see section 118, *post*, as to the power of existing clerks of the peace to appoint and act by deputy.

(5) The council shall pay to the clerk of the peace in respect of his services as clerk of the peace and as clerk of the county council, such salary as may be from time to time fixed under the enactments relating thereto, and all fees and costs payable to the clerk of the peace which are not excluded when the salary of the clerk of the peace is fixed shall be paid to the county fund, and for the purpose of the enactments relating to such salary and fees, the standing joint committee of the county council and the quarter sessions shall be substituted for the quarter sessions and the local authority respectively.

Sect. 83. Note Sub-s. 5.

The enactments relating to the salary and fees of the clerk of the peace are the 57 Geo. 3, c. 91 ; 11 & 12 Vict. c. 43, s. 30 ; 14 & 15 Vict. c. 55, ss. 9, 12 ; 18 & 19 Vict. c. 126, s. 18 (set out *ante*, p. 43) ; 32 & 33 Vict. c. 89, s. 11 ; 45 & 46 Vict. c. 50, s. 164.

For the provisions of these Acts the reader is referred to *Archbold's Quarter Sessions*.

As to the county fund, see section 68, *post*.

(6) The clerk of the peace, when acting in relation to any business of the county council, and when acting under the Acts relating to the registration of parliamentary voters, or to the deposit of plans or documents, or to jury lists, or to any registration matters, shall act under the direction of the county council, and all enactments relating to such business, registration, or deposit, shall be construed as if clerk of the county council were therein substituted for clerk of the peace.

The duties of the clerk of the peace under the Acts relating to the registration of voters are very numerous and cannot here be stated in detail. The reader is referred to Messrs. Mackenzie & Lushington's recent work on these Acts.

As to the deposit of plans and documents, see the Cemeteries Clauses Act, 10 & 11 Vict. c. 65, s. 60 ; the Commissioners Clauses Act, 10 & 11 Vict. c. 16, ss. 109—111; the Gas Works Clauses Act, 10 & 11 Vict. c. 15, ss. 45, 46; the Harbours, &c., Clauses Act, 10 & 11 Vict. c. 27, ss. 97, 98; the Lands Clauses Act, 8 Vict. c. 18, ss. 151, 152; the Markets and Fairs Clauses Act, 10 & 11 Vict. c. 14, ss. 58, 59 ; the Railways Clauses Act, 8 Vict. c. 20, ss. 8—10, 59, 130, &c. By the 7 Will. 4 & 1 Vict. c. 83, clerks of the peace are required to take the custody of all such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament, and to permit all persons interested to inspect them and make copies and extracts on payment by each person of the sum of 1*s*. for each such inspection, and the further sum of 1*s*. for every hour during which such inspection shall continue after the first hour, and after the rate of 6*d*. for every 100 words copied therefrom.

As to the duties of the clerk of the peace with reference to the jury lists, see 6 Geo. 4, c. 50, s. 6, and 25 & 26 Vict. c. 107, s. 4.

All these duties are now to be performed under the direction of the county council.

(7) The office of clerk of the peace of each of the administrative counties of Sussex shall be a separate office ; but nothing in this Act shall prevent the same person from being appointed to both such offices, and the justices in general sessions assembled for the entire county of Sussex or Suffolk may from time to time appoint the person who is clerk of the peace for either administrative county to be clerk of the peace of such general sessions, and may remove such clerk, and the remuneration to be paid to such clerk shall be determined jointly by the standing joint committees for the administrative counties.

As to the divisions of Sussex and Suffolk, see section 46, sub-section (1), *ante*, p. 82.

(8) The existing records of the county of Sussex and of the county of Suffolk shall, subject to the order of quarter sessions, continue to be kept by the clerk of the peace of East Sussex and by the clerk of the peace for East Suffolk respectively.

(9) This section shall apply to the clerks of the peace and deputy clerks of the peace of the county of Lancaster, in like manner as it applies to clerks of the peace of any other county, but the appointment of any such deputy clerk of the peace may be discontinued if the standing joint committee think fit.

(10) The joint committee of the councils of the three ridings or divisions of Yorkshire and Lincolnshire may from time to time appoint a clerk of such joint committee, and may from time to time remove such clerk.

As to the joint committee, see section 46, sub-section (2), *ante*, p. 83.

(11) The clerk of the peace for the county of London shall be a separate officer from the clerk of the county council for the administrative county of London, and

The present clerk of the peace for Middlesex is to be the first clerk of the peace for London, but he will not be clerk of the London county council.

(*a*) The clerk of the peace shall, subject to the directions of the quarter sessions, have charge of and be responsible for the records and documents of those sessions and of the justices out of session, and the clerk of the county council shall, subject to the directions of the council, have charge of and be responsible for all other documents of the county; and

(*b*) The council may from time to time appoint a deputy clerk of the council, and the foregoing provisions of this section with respect to the deputy clerk shall apply; and

(*c*) The council shall pay to the clerk of the council such salary as may be from time to time fixed by them.

(12) The county council shall cause their clerk or other officer from time to time to send to a Secretary of State or the Local Government Board such returns and information as may from time to time be required by either House of Parliament.

Sect. 83. Sub-s. 13.

(13) Provided always, that no paid clerk or other paid official in the permanent employment of a county council who is required to devote his whole time to such employment shall be eligible to serve in Parliament.

Appointment of the justices' clerks and clerks of committees.

84. (1) The salaried clerk of every petty sessional division shall be from time to time appointed, and removed, as heretofore.

Clerks to justices are appointed in counties by the justices of the petty sessional division under 40 & 41 Vict. c. 43, s. 5, and in boroughs by the borough justices under 45 & 46 Vict. c. 50, s. 159.

(2) The county council shall pay to the salaried clerks of petty sessional divisions such salaries as may be fixed under the enactments relating to those clerks, and all fees and costs payable to such clerks which are not excluded in the fixing of their salaries shall be paid into the county fund, and in the enactments relating to such salaries and fees the standing joint committee shall be substituted for the quarter sessions justices and the local authority respectively.

The enactments relating to the salaries and fees of justices' clerks are 11 & 12 Vict. c. 43, s. 31; 14 & 15 Vict. c. 55, ss. 9—12; 40 & 41 Vict. c. 43. See also the Local Stamp Act, 1869, 32 & 33 Vict. c. 49, referred to in section 3, sub-section (xiii.), *ante*, p. 5, and section 30, *ante*, p. 50.

The duties under these Acts will henceforth be fulfilled by the standing joint committee appointed under section 30, *ante*, p. 50.

Regulations for Bicycles, &c.

Regulations for bicycles, &c.

85. (1) The provisions of section twenty-six, sub-section five, of the Highways and Locomotives (Amendment) Act, 1878, and section twenty-three, sub-section one, of the Municipal Corporations Act, 1882, in so far as it gives power to the council to make bye-laws regulating the use of carriages herein referred to, and all other provisions of any public or private Acts, in so far as they give power to any local authority to make bye-laws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, and bicycles, tricycles, velocipedes, and other similar machines are hereby declared to be carriages within the meaning of the Highway Acts; and the following additional regulations shall be observed by any person or persons riding or being upon such carriage:—

(*a*) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp,

which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage; Sect. 85. Sub-s. 1*a*.

(*b*) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, being on or proceeding along the carriage way, every such person shall within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage.

Section 26, sub-section (5), of the Highway Act, 1878, enabled a county authority to make bye-laws for regulating the use of bicycles. These bye-laws differed considerably in the different counties, and from bye-laws regulating the use of bicycles and tricycles in boroughs made under section 23 of the Municipal Corporations Act, 1882, *post*. The power to make bye-laws for these purposes is now repealed, as also are the provisions of any public or private Acts giving power to make such bye-laws.

The declaration that bicycles, &c., are carriages within the meaning of the Highway Acts was, perhaps, unnecessary, for it was held in *Taylor* v. *Goodwin*, 4 Q. B. D. 228; 43 J. P. 653, that a bicycle is a carriage within the meaning of the Towns Police Clauses Act, and that a person might be convicted under it of furious driving. But possibly there was some doubt on the point, having regard to *Williams* v. *Ellis*, 5 Q. B. D. 175, where it was held that a bicycle was not a carriage liable to toll under a Turnpike Act. At all events, the text makes an express provision, the effect of which will be to apply to bicycles, &c., the provisions of the Highway Acts as to driving on footpaths, keeping to the near side of the road, furious driving, &c.

The additional regulations under this sub-section will be of universal application, and will supersede all existing local regulations.

(2) Any person summarily convicted of offending against the regulations made by this section, shall for each and every such offence forfeit and pay any sum not exceeding forty shillings.

This penalty will be recovered summarily, *i.e.*, on summons before two justices.

Adaptation of Acts.

86. For the purpose of adapting the Acts relating to pauper lunatic asylums to the provisions of this Act, the following provisions shall have effect:— Adaptation of Lunatic Asylum Acts.

(1) The accounts of the committee of visitors and of their officers shall, for the purposes of the provisions of this Act with respect to accounts of a county council and their officers, and the audit thereof, be deemed to be accounts of the council and officers.

As to the accounts of the county council and their audit, see section 71, *ante*, p. 116.

Sect. 86. Sub-s. 2.

(2) Nothing in this Act shall transfer to the county council or any members thereof the jurisdiction of quarter sessions or any justices in relation to the removal, reception, or detention of a lunatic into or in an asylum, or to making orders respecting the payment otherwise than out of the county fund of charges incurred on account of any pauper lunatic, or respecting any property of any such lunatic, or respecting his settlement or chargeability, or in relation to any appeal touching the said matters.

This preserves to justices the powers they now possess under 16 & 17 Vict. c. 97, and amending Acts, to order the removal of a lunatic to an asylum, to make orders as to his chargeability, maintenance, property, and the like.

(3) Where at the passing of this Act the recorder or justices or council of a borough appoint members of the committee of visitors of any lunatic asylum, then—

(*a*) If the representatives of that borough on the county council are entitled to vote for the appointment by that council of visitors of that asylum, such recorder or justices or council shall cease to have power to appoint the said members; and

(*b*) If the representatives of the borough are not so entitled to vote, the said power of appointment by the recorder or justices shall be transferred to the council of the borough.

As to the appointment by the recorder or borough justices, see 16 & 17 Vict. c. 97, ss. 9, 10; 19 & 20 Vict. c. 87, s. 1.

Representatives of the borough will not be entitled to vote if the borough is not assessed to county contributions in respect of lunatic asylums. See section 35, sub-section (6), *ante*, p. 65.

(4) Where at the passing of this Act a borough with a separate court of quarter sessions not being a county borough, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, contracts with the quarter sessions of the county in which the borough is situate for the reception of the lunatics of the borough in the asylum of the county, such borough shall, on the determination of such contract, cease to have power to build a lunatic asylum, and subject to the enactments providing for an additional charge for the maintenance of lunatics in cases where no contribution has been made towards the cost of building

and furnishing an asylum, shall be liable to contribute to the county rate of the county in respect of such lunatic asylum in like manner as the rest of the county. Sect. 86. Sub-s. 4.

The contract here referred to is that made under 16 & 17 Vict. c. 97, s. 7. As to the additional charges referred to in the text, see 30 & 31 Vict. c. 23; 31 & 32 Vict. c. 122, s. 14; 39 & 40 Vict. c. 61, s. 26.

(5) Any asylum provided in whole or in part at the cost of a county shall for the purposes of this Act be included in the expression "county lunatic asylum."

(6) Where there is more than one county lunatic asylum, the county council may from time to time appoint one committee for the management and control of all the county lunatic asylums, and such committee shall be the committee of each asylum within the meaning of the Acts relating to pauper lunatic asylums, and shall from time to time appoint a sub-committee for each separate asylum, and may delegate to that sub-committee such powers and duties as the committee from time to time think fit.

The sub-committee is to be appointed by the committee, who are to assign the powers and duties of the sub-committee.

(7) The said committee may, subject to any directions given by the county council, provide that a uniform charge shall be made for the maintenance of lunatics in the several county asylums, and that for that purpose any surplus arising on the accounts of one asylum shall be applied to meet the deficit arising on the accounts of another asylum.

(8) The provisions of this Act with respect to the proceedings of committees of county councils shall apply to the proceedings of the committee of visitors for a lunatic asylum, and the chairman of such committee may be elected accordingly.

As to the proceedings of committees of county councils, see section 82, *ante*, p. 140.

87. (1) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and Application of provisions of 38 & 39 Vict. c. 55, as to local inquiries

Sect. 87. Sub-s. 1. and provisional orders.

in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.

Sections 293—296 of the Public Health Act, 1875, are as follows:—

"The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

"The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any persons named therein.

"All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

"Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts."

(2) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of provisional orders by the Local Government Board), shall apply for the purposes of this Act as if they were herein re-enacted, and in terms made applicable thereto.

Sections 297 and 298 of the Public Health Act, 1875, are as follows:—

"With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made:—

"(1) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:

"(2) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections:

"(3) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:

"(4) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised

therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills:

"(5) An Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any order in council made in pursuance of any of the Sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament:

"(6) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament:

"(7) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:

"(8) Every Act confirming any such provisional order shall be deemed to be a public general Act.

"The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs."

(3) Provided that, where a provisional order transfers to county councils generally any powers, duties, or liabilities of Her Majesty's Privy Council, a Secretary of State, the Local Government Board, or other Government Department, it shall not be necessary to hold a local inquiry, nor to advertise in any local newspaper.

In the cases mentioned in the text, the advertisements and notices required by section 297 of the Public Health Act (see the note to sub-section (2)) are dispensed with.

The provisional order here referred to is that made under section 10, *ante*, p. 16.

(4) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

See, for example, section 57, sub-section (1), *ante*, p. 96.

(5) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the

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Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

Adaptation of Act to Metropolis.

88. In the administrative county of London the following provisions shall have effect:

(*a*) The county council may from time to time appoint any fit person to be deputy chairman, and to hold office during the term of office of the chairman, and may pay to such deputy chairman such remuneration as the county council may from time to time think fit;

As to the administrative county of London, see section 40, *ante*, p. 72.

The chairman may himself receive remuneration under section 15 (4) of the Municipal Corporations Act, 1882, *post*; but the vice-chairman appointed under sub-section (2) (*b*), *ante*, p. 4, is not a paid officer. In London the provisions of section 2 (6) will be superseded by the text.

(*b*) Subject to any rules from time to time made by the county council, anything authorised or required to be done by, to, or before the chairman, may be done by, to, or before such deputy chairman;

See the last preceding note, and compare the provisions of section 2 (6), *ante*, p. 4.

38 & 39 Vict. c. 55.

(*c*) Section one hundred and ninety-one of the Public Health Act, 1875, shall apply to the Metropolis in like manner as if the Commissioners of Sewers in the City of London, and every vestry of a parish in Schedule A., and district board of a district in Schedule B. to the Metropolis Management Act, 1855, or under any Act amending the same, were a local authority within the meaning of that section, and as if any medical officer hereafter appointed by such commissioners, vestry, or district board were appointed under the said Act, and the provisions of this Act with respect to the qualification of a medical officer or to the payment by a county council of a portion of the salary of a medical officer shall apply accordingly.

18 & 19 Vict. c. 120.

Section 191 of the Public Health Act, 1875, relates to the appointment, &c., of medical officers of health. It is set out at p. 45, *ante*. The provisions of this Act with respect to the qualification of a medical officer are contained in section 18, p. 32. See also sections 17, 19, 24 (2) and (3).

Adjustment of law as regards

89. (1) The Central Criminal Court Act, 1834, shall be construed as if the county of London were throughout mentioned therein as well as the county of Middlesex.

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courts, juries, sittings, and legal proceedings in Middlesex and London. 4 & 5 Will. 4, c. 36. 6 Geo. 4, c. 50.

(2) The County Juries Act, 1825, and the Acts amending the same, shall apply to the county of London in like manner as they apply to the county of Middlesex, and persons shall be qualified to serve as jurors, and lists of jurors shall be made out in like manner, so nearly as circumstances admit, as in that county; and the present exemption of inhabitants of the liberty and city of Westminster from serving on juries at quarter sessions for the county of Middlesex shall cease; but nothing in this section shall alter the qualification of persons to serve as jurors within the city of London.

(3) Subject to rules of court made by the authority having power to make rules for the Supreme Court of Judicature, the county of London and the county of Middlesex shall be deemed to be one county for the purpose of all legal proceedings, civil or criminal, in the Supreme Court or Central Criminal Court, or any other court except the court of quarter sessions, and also for the purpose of the sittings of the Supreme Court, Central Criminal Court, or such other court as aforesaid, or of any judge of any of such courts, and also for the purpose of any jury, and of any court of assize, oyer and terminer, and gaol delivery; and all enactments, rules, orders, and documents referring to Middlesex shall be construed so as to give effect to this section; and rules of court may be from time to time made for the purpose of carrying this section into effect, and for regulating the issue of precepts to the sheriffs of the counties of London and Middlesex for the return of jurors, and the jurors so returned shall have the same powers, duties, and liabilities as if the two counties were one county.

The authority having power to make rules for the Supreme Court is exercised by any five or more of the following persons, of whom the Lord Chancellor shall be one, viz., the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division, and four other judges of the Supreme Court appointed by the Lord Chancellor. 44 & 45 Vict. c. 68, s. 19.

For the purposes of all legal proceedings in any court, save that of quarter sessions, London and Middlesex are to be deemed one county.

Special provisions as to adjustment in the Metropolis. 10 & 11 Vict. c. 99.

90. In the adjustment of the property, debts, and liabilities between the counties of Surrey and Middlesex respectively and the county of London, the annual sums payable by the counties of Surrey and Middlesex respectively in respect of certain bridges in pursuance of the Metropolis Toll Bridges Act, 1877, shall be deemed to be liabilities which shall be taken into consideration upon such adjustment.

The adjustment here referred to is that made under section 40, sub-section (7), *ante*, p. 73.

Sect. 90. NOTE. The Metropolis Toll Bridges Act, 1877, is a local Act, and should be described as 40 & 41 Vict. c. xcix., not as in the margin.

Adjustment as regards the Militia Acts.

91. The Acts relating to the general and local militia of the rest of England and Wales shall apply to the whole of the county of London in like manner as they apply to any county at large; and accordingly Her Majesty shall from time to time appoint a lieutenant of the county of London, provided that nothing in this section shall affect section fifty of the Militia Act, 1882.

45 & 46 Vict. c. 49.

By the 45 & 46 Vict. c. 49, s. 50, the city of London is a separate county for the purposes of the militia.

Savings.

Saving for votes at any parliamentary elections.

92. (1) Nothing in this Act, nor anything done in pursuance of this Act, shall alter the limits of any parliamentary borough or parliamentary county, or the right of any person to be registered as a voter at any parliamentary election.

For the definition of a parliamentary voter or parliamentary county, see section 100, *post*.

(2) Where by virtue of the provisions of this Act with respect to the county of London, or to urban sanitary districts situate partly within and partly without the boundary of a county, a place situate in a parliamentary county becomes part of the county of a council other than the council having authority over the largest part of the parliamentary county, that is to say, the part which contains the largest number of occupation voters, then, for the purpose of making out and revising the lists of voters, of conducting any parliamentary election, of polling districts, and assigning polling places, and for all purposes of and incidental to such matters, including the payment of expenses, such place shall be deemed to be part of the same county as the said largest part of the said parliamentary county, and the sheriff, council, clerk of the peace, authorities, and officers of that county shall have authority accordingly in the said place, and the provisions of the Registration Act, 1885, with respect to parliamentary counties extending into more county quarter sessional areas than one, shall apply with the necessary modifications.

48 & 49 Vict. c. 15.

The provisions of this Act as to the county of London are contained in section 40, *ante*, p. 72. As to urban districts situate partly within and partly without the boundary of an administrative county, see section 50, *ante*, p. 88.

(3) Provided that the clerk of the peace who receives from the revising barrister the lists of voters in any such place shall supply

to any other clerk of the peace or other officer such number of revised lists as he may require for the purpose of making up a register of county electors. Sect. 92. Sub-s. 3.

93. (1) Nothing in this Act shall alter the metropolitan police district, nor (save as is expressly provided with respect to contributions in substitution for local grants) affect the metropolitan police force, or the raising of money for the same, and nothing in this Act shall affect the police of the city of London. Saving for metropolitan and city police.

As to contributions in substitution for local grants in the metropolitan police district, see section 24 (2) (*k*), *ante*, p. 43.

(2) Nothing in this Act shall authorise any county council to raise any sum for the purposes of any police force by any contribution or rate levied within the metropolitan police district; and nothing in this Act shall alter the authority under the Riot (Damages) Act, 1886, within the metropolitan police district or the city of London. 49 & 50 Vict. c. 38.

As to the rates for the police in the metropolis, see 30 & 31 Vict. c. 67, s. 2, *ante*, p. 44.

As to the Riot (Damages) Act, see section 3 (xiv.), *ante*, p. 10. The authority under that Act is, in the city of London, the common council; in the metropolitan police district, the receiver for the metropolitan police district. The London county council will not, therefore, exercise jurisdiction under the Act; and the county councils of Middlesex, Surrey, and Kent will only act as local authority in places beyond the metropolitan police district.

94. The grant made by the county council of London in respect of indoor paupers shall be in addition to any payment made out of the metropolitan common poor fund, and nothing in this Act shall affect the enactments relating to the fund. Saving for metropolitan common poor fund

The grant made by the London county council in respect of indoor paupers is made under section 43, *ante*, p. 80. For the transitory proceedings as to this grant, see section 121, *post*.

The metropolitan poor fund was established by the 30 Vict. c. 6. It is a fund raised by contributions from the several unions, parishes, and places in the metropolis. These contributions are paid to a receiver appointed by the Local Government Board. The fund is applied in payment of the expenses of lunatic asylums, fever or smallpox hospitals, medicine and medical and surgical appliances supplied by guardians by way of relief, salaries of officers of guardians, district school managers and asylum managers, and officers of dispensaries, registration of births and deaths, vaccination, maintenance of pauper children in schools, &c.; also in payment of the expenses of the maintenance of paupers above the age of sixteen years in any workhouse in the metropolis, the amount to be repaid being at the rate of fivepence per day for each pauper. The Acts which contain provisions relating to the fund are 30 Vict. c. 6; 31 & 32 Vict. c. 122; 32 & 33 Vict. c. 63; 33 & 34 Vict. c. 18; 34 & 35 Vict. c. 15; 39 & 40 Vict. c. 61; 42 & 43 Vict. c. 54.

Sect. 95. Sub-S. 1.

Saving as to Middlesex, Surrey, and Kent.

95. (1) Any enactment providing that any magistrate, commissioner, or other officer shall be a justice of the peace for Middlesex, shall be construed to refer to the county of London as well as the county of Middlesex.

See, for example, 2 & 3 Vict. c. 71, ss. 1, 3, which provides that metropolitan stipendiary magistrates shall be justices of the county of Middlesex: and 10 Geo. 4, c. 44, s. 1; 2 & 3 Vict. c. 47, s. 4; 19 & 20 Vict. c. 2, s. 2, which provide that the commissioner and assistant commissioners of police shall be justices for the home counties.

(2) Where any enactment, deed, instrument, or document refers to the county of Middlesex, Surrey, or Kent, such enactment, deed, instrument, or document shall be construed to apply to the same area to which it would have applied if this Act had not passed, except where such application is inconsistent with this Act, or where the object of such enactment, deed, instrument, or document requires that it shall be construed to apply to the county of London.

Saving for Middlesex Land Registry.

96. Nothing in this Act shall alter the area to which the enactments relating to the registration of land in the county of Middlesex apply, and any reference in those enactments or in any deed, instrument, or document made or issued under or for the purpose of those enactments, to the county of Middlesex, shall be construed to apply to the same area to which it would have applied if this Act had not passed.

The enactments relating to land registry in Middlesex are 7 Anne, c. 20; 25 Geo. 2, c. 4; 7 Will. 4 & 1 Vict. c. 30, s. 28; 5 & 6 Vict. c. 103, s. 34; 22 & 23 Vict. c. 21; 25 & 26 Vict. c. 53, s. 104; 37 & 38 Vict. c. 78, s. 8; 38 & 39 Vict. c. 87, ss. 127, 128; 44 & 45 Vict. c. 41, s. 34.

Saving as to liability for main roads.

97. Nothing in this Act with respect to main roads shall alter the liability of any person or body of persons, corporate or unincorporate, not being a highway authority, to maintain and repair any road or part of a road.

This section was inserted to preserve the liability of persons or corporations to repair roads which have or may become main roads, when such roads were previously repairable by them *ratione tenuræ*, or by prescription, or under an Act of Parliament, such as the Railways Clauses Act, which imposes on railway companies the duty of repairing roads in some cases.

Saving for powers of Commissioners of Inland

98. Notwithstanding anything in the foregoing sections of this Act, the Commissioners of Inland Revenue and the Commissioners of Customs, and the officers of those Commissioners respectively, shall have the same powers in relation to any articles subject to

any duty of customs or excise, manufactured, imported, kept for sale or sold, and any premises where the same may be, and to any machinery, apparatus, vessels, utensils, or conveyances used in connection therewith or the removal thereof, and in relation to the person manufacturing, importing, keeping for sale, or having the custody of the same, as they would have had if this Act had not passed, and any licenses transferred in pursuance of this Act had continued to be granted by the Commissioners of Inland Revenue. Sect. 98. Revenue and Customs.

Definitions.

99. All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purposes of this section "print" includes any mechanical mode of reproduction. Definition of "written."

100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say: Interpretation of certain terms in the Act.

The expression "county" does not include a county of a city or county of a town:

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties.

The expression "division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division:

The reference here is to section 64, *ante*, p. 105, which transfers to county councils property held for a division of a county.

The expression "administrative county," means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough:

The administrative counties which are not entire counties are those enumerated in section 46, *ante*, p. 82.

The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts: 18 & 19 Vict. c. 120.

Sect. 100.

45 & 46 Vict. c. 50.

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city:

The expression "quarter sessions borough" means a borough having a separate court of quarter sessions and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882:

The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects the city of London, means the court of the mayor and aldermen in the inner chamber:

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part:

48 & 49 Vict. c. 15.

The expressions "parliamentary county," and "parliamentary election," and "parliamentary voters," have the same meaning as in the Registration Act, 1885, and the Acts therein referred to.

By 48 Vict. c. 15, s. 19, the expression "parliamentary county" means a county returning a member or members to serve in Parliament, and where a county is divided for the purpose of such return means a division of such county.

By 41 & 42 Vict. c. 77, s. 4, amended by 48 Vict. c. 15, s. 1 (3), the term "parliamentary voter" means a person entitled to be registered as a voter, and when registered to vote at the election of a member or members to serve in Parliament for a parliamentary borough or county.

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The expression "Treasury" means the Commissioners of Her Majesty's Treasury;

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day: Sect. 100.

For the appointed day, see section 109, *post*.

The expression "guardians" means guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834: 4 & 5 W. 4, c. 76.

The expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians:

The expressions "district council" and "county district" mean respectively any district council established for purposes of local government under an Act of any future session of Parliament, and the district under the management of such council, and until such council is established, mean respectively—

(*a*) As regards the provisions of this Act relating to highways and main roads, a highway authority and highway area; and

(*b*) Save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and the district of such authority: 38 & 39 Vict. c. 55.

This definition became necessary when it was resolved to omit from this Act the clauses relating to district councils.

The expression "highway area" means, as the case may require, an urban sanitary district, a highway district, or a highway parish not included within any highway or urban sanitary district:

The expression "highway authority" means, as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board, or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties:

It should be borne in mind that by virtue of sections 35 (4) and 38 (4) boroughs are now to be included in the definition of an urban sanitary authority in the Highway Act, 1878, and the council of the borough is therefore the highway authority.

Sect. 100. The expression "urban authority" means, until the establishment of district councils as aforesaid, an urban sanitary authority; and after their establishment, the district council of an urban county district:

By the Public Health Act, 1875, section 6, urban authorities are, in a borough, the town council; in a local government district, the local board; and in an Improvement Act district, the Improvement Commissioners.

The expression "rural authority" means, until the establishment of district councils as aforesaid, a rural sanitary authority; and, after their establishment, the district council of a rural county district:

By the Public Health Act, 1875, section 9, the area of a union outside an urban district is a rural sanitary district in which the guardians are the rural sanitary authority.

The expression "person" includes any body of persons whether corporate or unincorporate:

Any expression referring to the value of any parish, borough, or area as ascertained by the standard or basis for the county rate or contributions shall, where any rateable value has been fixed by agreement between the councils of any county and county boroughs, be that value, and subject thereto, shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area; and where an area is authorised or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate:

See as to this definition, section 33, *ante*, p. 57. See also section 24 (5) and section 26 (2).

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act

have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority: and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions: Sect. 100.

As to the appointed day, see section 109, *post*.
As to the transfer of property, see section 64, *ante*, p. 105.
As to the River Weaver Trust, see section 69 (12), *ante*, p. 115.

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities:

The expression "duties" includes responsibilities and obligations:

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer, or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose:

The expression "powers, duties, and liabilities," includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act:

The expression "expenses" includes cost and charges:

The expression "costs" includes charges and expenses:

The costs of assizes and of quarter and petty sessions include such of the following costs as are applicable, that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices, and other officers, the costs of the jury lists, the costs of rewards ordered to be paid by the court, the costs of prosecutions, including the costs of the defendants' witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes, except in the case of prisoners committed for trial from the borough:

A quarter sessions borough may be a county borough; see the definition, *supra*. Quarter sessions boroughs are to contribute towards the cost of assizes, &c., under section 32 (3) (*a*), *ante*, p. 53, section 35 (5), *ante*, p. 65, section 38 (5). section 39 (1).

Sect. 100.

The expression "assizes" includes the Central Criminal Court:

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer:

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly:

The expression "the divisions of Lincolnshire" means the parts of Holland, the parts of Kesteven, and the parts of Lindsey:

19 & 20 Vict. c. 69.

The expression "County and Borough Police Act, 1856," means the Act of the session of the nineteenth and twentieth years of the reign of Her present Majesty, chapter sixty-nine, intituled "An Act to render more effectual the Police in Counties and Boroughs in England and Wales," and the expression "County and Borough Police Acts" means the County and Borough Police Act, 1856, and the Acts therein recited:

The expression "main road" when used in relation to the district of any highway or road authority, means so much of the main road as is situate within the district of such authority.

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the town hall or other conspicuous place.

As to the meaning of this provision, see the note to section 75, sub-section (9), *ante*, p. , and the note to the Municipal Corporations Act, 1882, schedule 3, part 2, rule 15, *post*.

Extent of Act.

101. This Act shall not extend to Scotland or Ireland.

Short title.

102. This Act may be cited as the Local Government Act, 1888.

PART VI.

Transitory Provisions.

First Election of County Councillors.

First election of county councillors

103. (1) The first election of county councillors under this Act shall be held in the month of January next after the passing of this Act on such day in each county not earlier than the fourteenth day of January as the returning officer for that county may fix, and the returning officer shall publish notice of such day in the preceding

month of December, and the day so fixed shall be deemed for the purposes of the first election to be the ordinary day of election of county councillors. Sect. 103. Sub-s. 1.

The notice of election is to be published during December, 1888. This notice will correspond to that required by the Municipal Corporations Act, 1882, section 54, *post*. The returning officer will fix the day of election for some day between the 14th and 31st day of January, 1889.

The nomination papers must be delivered and all other preliminary matters performed in manner provided by the Municipal Corporations Act, 1882, schedule 3, part 2, *post*.

(2) The sheriff of each county shall be the returning officer for such first election, but if the sheriff desires to be a candidate at such election the county quarter sessions on his application may appoint another person to be the returning officer, and the person so appointed shall, for the purpose of such election, have the powers and duties of the sheriff.

As to the returning officer for the first election in the county of London, see sub-section (7), *post*.

(3) At the first election, the returning officer may, if it appears to him necessary, divide an electoral division into polling districts, so however that every polling district shall be an area or a combination of areas for which separate parts of the register of electors are made out, and he shall settle and give proper notice of the places at which the poll for each electoral division, or district of a division, shall be taken.

It will be remembered that electoral divisions are to be framed with regard to polling districts.

By the County Electors Act, section 4, sub-section (2), amended by section 76, sub-section (1), of this Act, *ante*, p. 131, where a parish is not situate in a municipal borough, the lists and register of voters are to be framed in parts for polling districts and electoral divisions and for urban districts, and for wards of urban and rural districts, in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts and elections in urban districts and as electoral division or ward lists.

As to the power of the Local Government Board to remedy defects if no register of electors is properly made up, see section 108, *post*.

(4) The clerk of the peace who will by virtue of this Act become the clerk of the county council when elected, shall make up the county register and division registers of the county electors for the purposes of the first election, and shall deliver the same to the returning officer, and every clerk of the peace who has in his custody any revised lists of electors required for making up such registers, shall supply to the above-mentioned clerk of the peace such number of copies of those lists as he may require for the purpose of making up the said registers.

Sect. 103. NOTE SUB-S. 4.

As to the clerk of the peace, who will become the clerk of the council, see section 118, *post*. See also section 83, *ante*, p. 140.

As to the duty of the clerk of the peace to make up the register of county electors for the county and for the electoral divisions, see section 7 of the County Electors Act. This duty will in London devolve upon the returning officer at the first election. (See sub-section (8), *post*.)

As to the concluding portion of this sub-section, see section 92, sub-section (2), *ante*, p. 152.

(5) The returning officer shall send to the clerk of the peace, who will, by virtue of this Act, become the clerk of the county council, the names of the persons elected, and shall send to each person elected a county councillor notice of his election, accompanied by a summons to attend the first meeting of the provisional council fixed by this Act at such time and place as the returning officer may fix.

The date of the first meeting is fixed by section 105, sub-section (2), *post*, but the returning officer will fix the hour and the place of meeting.

As to the convening of the first meeting, see section 107, sub-section (6), *post*.

As to London, see sub-section (8), *post*.

(6) The costs properly incurred by the returning officer in reference to the first election, and in reference to such first meeting of the provisional council, shall be defrayed as expenses of the county council, and may be taxed on an application made by or by direction of the provisional council.

As to the expenses of the county council, see section 68, *ante*, p. 110.

As to the provisional council, see section 105.

As to taxation of the returning officer's expenses, see the notes to section 75, sub-sections (18) and (19).

(7) In the administrative county of London, the returning officer for the first election shall be such fit person as the Local Government Board may appoint, and such returning officer shall, for the purposes of such election, have the powers and duties of the sheriff, and any sheriff, under-sheriff, officer of the London School Board, or other public officer having authority in the metropolis, and being in possession of any ballot boxes or other fittings or arrangements for an election shall permit such returning officer to use the same for the purposes of such first election.

As to the administrative county of London, see section 40, *ante*, p. 72.

Apparently the use of the ballot boxes, &c., is to be free of charge; but probably the returning officer would be liable to make good any damage or injury. Having regard to the provisions of 38 & 39 Vict. c. 84, s. 6, *ante*, p. 129, it will be the duty of the returning officer to avail himself as far as practicable of the provisions in the text.

(8) Such returning officer shall make up the county register and division registers of the county electors for the purposes of the

first elections, and shall make them up out of the lists of voters made out in the year one thousand eight hundred and eighty-eight for the City of London, and for such portions of the counties of Middlesex, Surrey, and Kent, as are comprised in the Metropolis, and shall make the necessary alteration in the forms of those lists, and the secondary of the City of London and the town clerks within the meaning of the Registration Acts for the parliamentary boroughs in the administrative county of London, and the clerks of the peace of Middlesex, Surrey, and Kent shall deliver to the said returning officer such number of copies of the revised lists of electors as he may require. The returning officer for the administrative county of London shall send the names of the persons elected to the clerk of the Metropolitan Board of Works. Sect. 103. Sub-s. 8.

The returning officer here referred to is the returning officer for the administrative county of London.

(9) The court of quarter sessions in any county, and the Metropolitan Board of Works in the Metropolis, shall advance to the returning officer such sum as is authorised by this Act to be advanced by county councils to returning officers for the purposes of an election.

As to these advances, see section 75, sub-section (20), *ante*, p. 131.

(10) The sheriff having authority in any administrative county, or the largest part thereof, shall for the purposes of this Act be deemed to be the sheriff of that county.

As to an administrative county, see section 100, *ante*, p. 155.

104. (1) The county councillors of a county council elected at the first election shall retire from office on the ordinary day of election in the third year after the passing of this Act, and their places shall be filled by election. Retirement of first county councillors.

The ordinary day of election in the third year after the passing of this Act will be the 1st November, 1891. See section 2, sub-section (2), *ante*, p. 2, and section 52, of the Municipal Corporations Act, 1882, *post*.

(2) Of the first county aldermen one-half shall retire on the ordinary day of election of county aldermen in the third year next after the passing of this Act, and the one-half who are so to retire shall be determined by ballot by the provisional councillors at the time of the election of the county aldermen: Provided that where the total number of aldermen is not divisible by two the larger half shall first retire.

The county aldermen will be in number one-third of the number of councillors (see section 14, sub-section (2), of the Municipal Corporations Act,

Sect. 104. Note Sub-s. 2.

1882, *post*), except in London, where the number will be one-sixth. (See section 40, sub-section (5), *ante*, p. 73.) The first election of aldermen will take place at the first meeting of the provisional council. See section 105, sub-section (3), *post*.

The one-half who are first to retire will be determined by ballot, and they will retire on the 7th November, 1891. (See section 75, sub-section (13), *ante*, p. 124, and the Municipal Corporations Act, 1882, section 60, sub-section (1), *post*.)

(3) The remaining half of the county aldermen shall retire on the ordinary day of election of county aldermen in the sixth year next after the passing of this Act.

This will be on the 7th November, 1894. See the note to the preceding sub-section.

(4) In this section the word "year" shall be construed to mean calendar year.

Preliminary action of county councillors as provisional council.

105. (1) The members of a county council first elected under this Act shall not enter on their ordinary duties or become the county council until the first day of April next after their election, or such other day as on the application of the provisional council the Local Government Board may appoint.

This date will be the 1st April, 1889, unless the Local Government Board otherwise appoint.

(2) Such members shall, on the second Thursday next after the day fixed for the first election, and thenceforward from time to time until the day above mentioned in this section, meet and act as a provisional council for arranging to bring this Act into operation.

The hour and place of the first meeting is to be fixed by the returning officer. See section 103, sub-section (5), *ante*, p. 162.

As to the first proceedings of the provisional council, see the next section.

(3) The provisional councillors shall at their first meeting elect one of their number to be chairman of that meeting and of the second meeting, and shall then at that meeting, or some adjournment thereof, proceed to elect the county aldermen in like manner as if they were a fully constituted county council, and such county aldermen shall be summoned to attend at the second meeting of the provisional council, and shall form part of the provisional council both for the election of chairman and all other purposes.

The first business will be the election of the chairman of the meeting. The next will be the election of aldermen, which will in this case precede that of the chairman, though in subsequent years the first business at the quarterly meeting held on the 7th November will be the election of chairman (see the Municipal Corporations Act, 1882, section 61, sub-section (2), *post*). The aldermen will form part of the council at the second meeting and may take part in the election of chairman.

With regard to the election of chairman of this meeting, if an equal number of votes is given for two or more persons, the meeting is to determine by lot who is to be chairman, and the chairman is to have a casting vote. (See section 107, sub-section (4), *post*.)

Sect. 105. Note Sub-s. 3.

(4) The provisional council shall, at their second meeting, or some adjournment thereof, proceed to elect as their chairman a person qualified to be chairman of the county council, and may from time to time fill any vacancy in the office of such chairman, and the person elected chairman shall be chairman of the provisional council, and also on and after the appointed day of the county council, and the term of office of such chairman shall end on the next ordinary day of election of chairman.

No day is fixed for the second meeting, but the aldermen have to be summoned, and it is presumed that the meeting must be convened by notice and summons in the usual way. See section 106, sub-section (2), *post*.

The first business will be the election of chairman of the council. The chairman of the first meeting will take the chair for the purpose and will have a casting vote. (See the note to the last sub-section.) The vice-chairman (see section 2, sub-section (6), *ante*, p. 4), and in London the deputy-chairman (see section 88, *ante*, p. 150), will then be elected. (See the next sub-section.)

The chairman of the council, and the vice-chairman and deputy-chairman, will hold office until the 7th November, 1889. See section 2, sub-sections (5), (6); section 75, sub-section (13); and section 88, of this Act; and section 61 of the Municipal Corporations Act, 1882, *post*.

(5) This enactment shall extend to the vice-chairman and deputy chairman.

See the note to the preceding sub-section.

First proceedings of provisional council.

106. (1) The provisional council after disposing of the preliminary business shall proceed to provide for bringing the various provisions of this Act into full operation on the appointed day or days, and to make the necessary arrangements with the quarter sessions, and with reference to the distribution of duties among the different officers, and to provide for all matters which appear necessary or proper for enabling the county council as constituted under this Act to execute their duties, and for giving full effect to this Act.

As to the appointed day, see section 109, *post*.

As to arrangements with the quarter sessions, see sub-section (7), *post*.

(2) The provisions of this Act, and the enactments applied by this Act with respect to the proceedings of the county council, shall apply to the proceedings of the provisional council, and any act of the provisional council may be signified under the hand of the chairman and any two members of the council present at the meeting, and countersigned by the officer acting as their clerk.

As to the proceedings of the county council, see section 79, *ante*, p. 136, and schedule 2 of the Municipal Corporations Act, 1882, *post*.

Sect. 106. Sub-s. 3.

(3) The provisional council of a county shall be entitled to use the buildings belonging to the quarter sessions of that county, so that they do not interfere with the holding of any court, and the clerk of the peace and his officers, and the officers of the quarter sessions, shall act as the officers of such provisional council, and further the provisional council may from time to time hire such buildings and appoint such interim officers as appear to them necessary for the performance of their duties, and the costs incurred in the hiring of such buildings and payment of such officers or otherwise in the performance of their duties shall be defrayed as costs properly incurred by the county council.

As to the payment of costs incurred by the county council, see section 68, *ante*, p. 110.

(4) There shall be paid out of the county rate to the clerk of the peace of the county, such reasonable remuneration as the court of quarter sessions may award for extra services rendered by him in bringing this Act into operation, and in acting as clerk of the county council, until his salary for acting as such clerk is fixed in manner provided by this Act.

The salary of existing clerks of the peace is to be not less than heretofore (see section 118, *post*). The salary of the clerk of the peace as such clerk, and as clerk of the council, will be fixed by the standing joint committee; see section 83, sub-section (5), *ante*, p. 141. The text provides for interim remuneration until this has been done.

(5) In the metropolis the foregoing provisions with respect to the use of buildings and the action of officers shall apply as if the Metropolitan Board of Works were the quarter sessions of the county, and as if any quarter sessions for the counties of Middlesex and Surrey were the quarter sessions of the county of London, but the provisional council for the administrative county of London shall make arrangements with the provisional councils of Middlesex and Surrey as respects the use of buildings and the employment of the clerk of the peace and his officers and the officers of the quarter sessions.

The London county council will supersede the Metropolitan Board of Works. See section 40, sub-section (8), *ante*, p. 74.

(6) The provisional council shall have the same power of levying contributions for the purpose of their costs and for the future costs of the county council as they would have if they were constituted a county council under this Act.

As to the levying of contributions, see section 68, *ante*, p. 110.

(7) The quarter sessions of every county and liberty, and in the metropolis the Metropolitan Board of Works, shall, by the appointment of committees, or the holding of sessions and meetings, and otherwise, make such provisions as are necessary or proper for making arrangements with the provisional council for carrying this Act into effect; and the quarter sessions may, after the appointed day, meet in like manner as if this Act had not passed, for the purpose of receiving reports from the committees and county officers for the period subsequent to the last quarter sessions and prior to the appointed day, and for making the ordinary quarterly payments, the usual sessional orders, and otherwise concluding and winding up the business of the county.

General Provision as to First Elections.

Casual vacancies at first elections.

107. (1) If at the first election a person is elected a county councillor for more than one electoral division of a county, his choice as to the division for which he will serve shall be made by writing addressed to the returning officer, and if not so made, the returning officer shall, on or before the day for the first meeting of the provisional council, determine the division for which such person shall sit.

No time is limited for the councillor making his choice, but it is obvious that the returning officer should allow him a reasonable time within which to do so.

(2) Any casual vacancy arising at the first election from a person being elected for more than one electoral division or being elected a county alderman, or from a failure of election or otherwise, may be filled in like manner as a casual vacancy in the county council may be filled, and the sheriff or other officer authorised to act as returning officer at the first election shall be the returning officer at any election held to fill a casual vacancy before the appointed day.

As to the manner in which casual vacancies are to be filled, see the Municipal Corporations Act, 1882, section 40. The day of election will be fixed by the returning officer. See section 66 of the same Act.

As to the returning officer, see section 103 (2) (7), *ante*, p. 161.

As to the appointed day, see section 109, *post*.

(3) Such number of members as have been elected for a county council at the first election shall, subject to any order of the Local Government Board to the contrary, under this Act proceed to act as a provisional council under this Act, notwith-

Sect. 107. Sub-s. 3.

standing any vacancy or vacancies arising from failure of election or otherwise.

As to the powers of the Local Government Board, see section 108, *post*.

(4) In case of equality of votes at the first or second meeting of a provisional county council, the chairman of the meeting shall have a second or casting vote, and where on the selection of the chairman of the meeting an equal number of votes is given to two or more persons, the meeting shall determine by lot which of those persons shall be the chairman.

The application of this sub-section has already been stated. See the notes to section 105 (3) (4), *ante*.

(5) The first meeting of the county council shall be held on the day appointed for the council coming into office, and shall be convened by the chairman of the provisional county council.

The council come into office on the 1st of April, 1889. See section 105 (1), *ante*.

As to the convening of the meeting, see the Municipal Corporations Act, 1882, schedule 2, *post*.

(6) Such first meeting, and also the first meeting of the provisional county council, shall be convened in like manner as meetings of the county council are required by this Act, and the enactments applied by this Act, to be convened and as if the person convening the same were the chairman.

See the note to the preceding sub-section.

See also section 103 (5), *ante*, as to the first meeting of the provisional council.

Power of Local Government Board to remedy defects.

108. (1) If from any cause there is no returning officer able to act in any county at the first election of a county council, or no register of electors properly made up, or no proper election takes place, or an election of an insufficient number of persons takes place, or any difficulty arises as respects the holding of the first election of county councillors, or as to the first meeting of a provisional council, the Local Government Board may by order appoint a returning officer or other officer, and do any matter or thing which appears to them necessary for the proper holding of the first election, and for the proper holding of the first meeting of the provisional council, and may, if it appears to them necessary, direct a new election to be held, and fix the dates requisite for such new election; any such order may modify the provisions of

this Act and the enactments applied by this Act so far as may appear to the Board necessary for the proper holding of the first election and first meeting of the provisional council. Sect. 108. SUB-S. 1.

This sub-section gives very extensive powers to the Local Government Board for the purpose of securing due elections. The Board may order a provisional council to refrain from acting as such under section 107 (3), *ante*.

(2) The Local Government Board in the case of the first election may also authorise an electoral division to return two or more members, in any case where the difficulties arising out of the registers of voters and the population of any area appear to render it necessary, and may also authorise portions of two or more county districts, or wards for which a separate register can be made, to be united for the purpose of an electoral division.

It will be remembered that by section 2 (2) of this Act, *ante*, p. 2, one councillor only is to be returned for an electoral division. See also section 51, *ante*, p. 89, as to the constitution of electoral divisions.

(3) The Local Government Board, on the application of a county council or provisional council, may, within six months after the day fixed for the first election of the councillors of such council, from time to time, make such orders as appear to them necessary for bringing this Act into full operation as respects the council so applying, and such orders may modify any enactment in this or any other Act, whether general or local and personal, so far as may appear to the Board necessary for the said purpose.

The date of the first election is a day between the 14th and the 31st January, 1889, fixed by the returning officer. See section 103 (1), *ante*, p. 160.
The power to modify enactments in general Acts is very unusual.

(4) The Local Government Board may also, if satisfied that an election cannot properly be held for any county council by reason of the electoral divisions not having been duly made, cause such steps to be taken as they consider necessary for constituting such electoral divisions and making up the registers of electors.

See section 51, *ante*, p. 89.

Appointed Day.

109. (1) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the first day of April next after the passing thereof, or such other day, earlier or later, as the Local Government Board (but after the election of county councillors for such county on the application of the provisional council or county council) may appoint, either generally Appointed day.

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or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, or for different counties.

After the election of councillors the Local Government Board can only vary the appointed day on the application of the council.

(2) Any enactment of this Act authorising anything to be done by the Commissioners of Inland Revenue or the Local Government Board, or relating to the registration of electors, or to the elections, or to any matter required to be done for the purpose of bringing this Act into operation on the appointed day, shall come into effect on the passing of this Act; but save as aforesaid, and save so far as there may be anything in the context inconsistent therewith, any enactment of this Act shall come into operation on the appointed day.

This enactment provides in effect that the Act shall not come generally into operation until the appointed day.

Transitional Proceedings.

Current rates, jury lists, &c.

110. (1) Every rate and precept for contributions made before the appointed day may be levied and collected, and proceedings for the enforcement thereof taken in like manner as nearly as may be as if this Act had not passed.

(2) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had in like manner as nearly as may be as if this Act had not passed, and every officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office and be bound to perform the same duties and render the same accounts, and be subject to the same liabilities, as before the appointed day.

(3) In the counties of Middlesex, Kent, and Surrey, the lists of jurors in force on the appointed day shall continue in force until the lists which are next made come into force, and all jurors summoned before the appointed day shall attend after that day as if summoned in accordance with this Act.

The lists which are next made come into force on the 1st January. See 6 Geo. 4, c. 50, s. 12.

(4) All proceedings, legal and other, commenced before the

appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and may be so carried on by the county council in substitution for the authorities by whom such proceedings were commenced. Every legal proceeding commenced before the appointed day may be amended in such manner as may appear necessary or proper in order to bring the same into conformity with the provisions of this Act. Sect. 110. SUB-S. 4.

(5) Every militiaman enlisted before the appointed day shall continue liable to serve in the same corps as if this Act had not passed.

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111. (1) Any committee for providing an asylum for pauper lunatics, or any committee of visitors of an asylum for pauper lunatics holding office on the day fixed for the first election of county councillors under this Act, shall continue to hold office until the expiration of one week after the county council have elected a committee for the like purposes and no longer. Transitory provisions as to lunatic asylums.

Committees for providing asylums are appointed under 16 & 17 Vict. c. 97. Committees of visitors are appointed at the Epiphany sessions in each year; 16 & 17 Vict. c. 97, s. 22. The committees elected for next year will hold office until the time stated in the text, when they will be superseded by the committees appointed by the county councils.

(2) Any committee elected by the county council shall come into office at the expiration of the said week, and shall be deemed to be a continuance of the old committee of visitors elected by the quarter sessions.

(3) All visitors of an asylum appointed on behalf of a borough, or subscribers who are visitors at the date of the first election of the county council under this Act, shall continue to be such visitors until the annual election of visitors which happens next after such election.

The annual election by subscribers here referred to takes place in the month of January. The election by borough justices takes place at a special meeting held within twenty days after the 20th December in each year. See 16 & 17 Vict. c. 97, s. 22.

(4) Anything done in pursuance of the enactments relating to pauper lunatics by the quarter sessions or any committee thereof before the appointment of any committee by the county council shall have effect as if it had been done by the county council or by a committee elected by the county council.

(5) Where there is a joint committee of visitors for two or more counties or boroughs, this section shall apply to each portion of

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the committee appointed by the justices of any such county, or by the justices or council of any such borough, in like manner as if it were a separate committee.

Transitory provisions as to Contagious Diseases (Animals) Acts.

112. (1) Every executive committee appointed by the quarter sessions under the Contagious Diseases (Animals) Acts, and holding office on the appointed day, shall continue to hold office until the expiration of one week after the county council shall have appointed a committee for the like purpose, and no longer.

These Acts are at present administered through executive committees and sub-committees. The county council has power under section 28 (2) to delegate their powers under these Acts to committees or to justices in petty sessions.

(2) An executive committee appointed by the county council shall come into office at the expiration of the said week, and shall be deemed to be a continuance of the outgoing executive committee.

(3) Every sub-committee of an executive committee under the said Acts holding office on the appointed day shall continue in office until a sub-committee for the like purposes shall be appointed by the county council, or by the executive committee appointed by the county council.

(4) Every committee and sub-committee continued in office by virtue of this section shall, during such continuance, have all such powers as it would have had if this Act had not been passed.

Transitory Provisions as to Metropolis.

Transitory provision as to sheriffs of London and Middlesex.

113. (1) The first sheriffs appointed by Her Majesty for the county of Middlesex and for the county of London may be nominated and appointed at the same time as the sheriff of any other county in England, and each of such sheriffs when appointed may make the declaration, and shall enter upon office, in like manner and at the like time as any other sheriff.

As to the appointment of the sheriff for Middlesex, see section 46 (6), *ante*, p. 85.

As to the appointment of the sheriff for London, see section 40 (2), *ante*, p. 72.

As to the sheriffs of the city of London, see section 41 (8), *ante*, p. 77.

Sheriffs are nominated on the 12th November in each year. See section 3 & 4 Will. 4, c. 99.

(2) Upon the first sheriff of Middlesex so entering into office, the sheriffs of London shall cease to have jurisdiction in the county of Middlesex.

See section 41 (8), *ante*, p. 77.

(3) Upon the first sheriff of the county of London so entering into office, the area which will become that county shall, for the purpose of the sheriff, be considered to be the county of London, and the sheriffs of the city of London shall cease to have any jurisdiction in the said area, and the sheriffs of Surrey and Kent shall cease to have any jurisdiction within the said area. Sect. 113. SUB-S. 3.

As to the sheriffs of the city of London, see section 41 (8), *ante*, p. 77.

(4) Provided that for the purpose of any sessions of the peace held by the justices of the counties of Middlesex, Surrey, and Kent, after the sheriff has so entered into office but prior to the date at which the justices of the county of London will come into office, the sheriffs of Middlesex, Surrey, and Kent shall continue to act and have jurisdiction as such sheriffs throughout those portions of the metropolis which originally formed part of those counties.

As to the date at which the justices of the county of London will come into office, see section 115, *post*.

(5) Lists of prisoners, writs, process, and particulars, and all records, jury lists, books, and matters appertaining to the county of Middlesex, and to such parts of the counties of Surrey and Kent as are included in the metropolis, shall be delivered, turned over, transferred, and signed in like manner in all respects, so nearly as circumstances admit, as is required to be done upon a new sheriff coming into office, in like manner as if the sheriff of Middlesex appointed by Her Majesty were, as respects such part of the county as will after the appointed day be the county of Middlesex, the new sheriff in succession to the sheriffs of London, and as if the sheriff of the county of London appointed by Her Majesty were, as respects the area of the metropolis exclusive of the city, the successor to the sheriffs of London, Surrey, and Kent.

As to the duty of an outgoing sheriff to hand to his successors lists of prisoners, &c., see 3 & 4 Will. 4, c. 99.

(6) If any question arises as to the delivery, turning over, transfer, or signature under this section, or any other matter relating to the change in the office of sheriff in the metropolis, such question shall be referred to the Lord High Chancellor, whose decision shall be final.

114. (1) The persons who, at the passing of this Act, are coroners for any districts which become wholly or partly, by As to existing coroners

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virtue of this Act, part of the county of London, shall continue to act for such districts until otherwise directed as hereinafter mentioned, and while so continuing to act shall, as respects such part of their district as is within the county of London, be deemed to be coroners for the county of London, and the amount payable in respect of the salaries, fees, and expenses of any such coroner, where the district is partly within and partly without the county of London, shall be apportioned between the counties in which such district is situate.

But for this provision, which was inserted at a late stage of the Bill, the present coroners for the metropolitan area would, having regard to section 40 (2), *ante*, p. 72, have ceased to have any jurisdiction in the county of London.

As to the salaries, fees, and expenses of the coroner, see section 3 (x.), *ante*, p. 8.

(2) In the case of any coroner's district being situate partly within and partly without the county of London, the county councils of the counties in which such district is situate shall arrange for the alteration in manner provided by law of the district, so that on the next avoidance of the office of coroner, or any earlier date fixed when the alteration is made, the coroner's districts shall not be situate in more than one county.

If the alteration is effected before a vacancy occurs, or so as to prejudice any existing coroner, he will be entitled to compensation under the next sub-section.

(3) For the purposes of this Act respecting compensation, the coroners shall be deemed to be officers of the quarter sessions of the county for which they are coroners.

The provisions of this Act as to compensation are contained in section 120, *post*.

As to commission of the peace for London.

115. (1) A commission of the peace for the county of London may be issued at any time after the passing of this Act, which shall be provisional until the appointed day, and the justices acting under such commission shall, until the appointed day, act provisionally for the purpose of bringing this Act into operation, and may from time to time be convened and meet and conduct their proceedings in like manner in all respects as if they were the justices of a county, and they shall proceed to make such arrangements as appear necessary or proper for bringing this Act into operation, and may for that purpose appoint any committee or committees, either alone or jointly with any quarter sessions or provisional council.

As to the appointed day, see section 109, *ante*, p. 169.

As to existing justices in the metropolis, see section 117, *post*.

As to the appointment of joint committees, see section 81, *ante*, p. 138.

(2) Nothing in this section shall confer on such justices any power to act as justices or as quarter sessions, nor any judicial jurisdiction, nor constitute any part of the metropolis a county for the purposes of justices and quarter sessions until the appointed day. Sect. 115. Sub-s. 2.

As to the appointed day, see section 109, *ante*, p. 169.

(3) Any sessions of the peace held after the appointed day may be convened by the said justices acting provisionally before the said day, and the first sessions of the peace held after the appointed day shall be deemed to be legally held, although no justice there present has taken the oaths required by law to be taken by justices of the peace, and any justice may nevertheless take the oaths at such sessions.

The oaths required by law to be taken by justices of the peace are the oaths of allegiance and the judicial oath. See 31 & 32 Vict. c. 72 ; 34 & 35 Vict. c. 48.

(4) The clerk of the peace for Middlesex holding office at the passing of this Act shall act as the clerk to the said justices for the county of London when acting provisionally in pursuance of this Act.

The clerk of the peace for Middlesex will also be the clerk of the peace for the county of London. See section 118 (8), *post*.

(5) The fees payable to the clerk of the peace and clerks of the justices, and other officers and authorities in Middlesex, at the passing of this Act, shall be the first fees which may be taken in the county of London by the clerk of the peace, the clerks to the justices, and other officers and authorities in the county of London, and may continue to be taken until they are abolished or altered in manner provided by law with respect to the abolition and alteration of such fees.

As to the alteration of these fees, see section 83 (5), *ante*, p. 141, and section 84 (2), *ante*, p. 144.

116. Until a scheme respecting the holding of courts of quarter sessions in the county of London comes into force, the following regulations shall be observed :— As to places for holding quarter sessions.

The scheme here referred to is that which is to be prepared under section 42 (7), *ante*, p. 78.

(*a*) Courts of quarter sessions for the trial of persons charged with offences shall be held at Clerkenwell and Newington, and courts of quarter sessions for appeals and other

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business shall be held at the places in London at which sessions are usually held at present, or at such of the said places as the county council may from time to time appoint; and courts of quarter sessions for the said purposes shall be respectively held at the same times, as nearly as may be, at each such place as heretofore;

(*b*) Cases triable at quarter sessions for the county of London shall (save as otherwise directed by the court of quarter sessions) be heard and determined, if they arose on the north side of the River Thames, at Clerkenwell, and if they arose on the south side of the River Thames, at Newington; and persons shall be committed for trial, and bail and recognizances shall be taken, and depositions, recognizances, documents, and things transmitted in such manner as appears necessary for carrying into effect this section, but a committal for trial or recognizance shall not be invalidated, nor shall the powers of the quarter sessions be affected by any disregard of this enactment, and every court of quarter sessions held in and for the county of London at whatever place such court is held shall have complete power to hear and determine any case arising in the county of London, notwithstanding an objection that the case ought to be heard and determined at the sessions held at another place in the county of London.

Cases arising on the south side of the Thames will be heard at Newington, though they may have arisen within that part of the county of London which was in the county of Kent.

(*c*) Every sessions shall, as the circumstances require, be deemed to be quarter or general sessions, and if held at different places to be original sessions or adjourned sessions, and if held simultaneously at two or more places to be divided courts of the same sessions;

(*d*) Every matter, civil or criminal, arising before the appointed day which would have been heard, tried, determined, or otherwise dealt with by any court of quarter sessions or assessment sessions, or any justices or otherwise, may be heard, tried, determined, and dealt with in like manner as if this Act had come into operation before the said matter arose, and recognizances existing at the appointed day shall have effect and be enforced in like manner, so nearly as circumstances admit, as they would have been if this Act had not passed; and where any

trial, motion, or other matter has been adjourned from any previous court of quarter sessions, assessment sessions, special sessions, or petty sessions, and would if this Act had previously come into operation have been heard, determined, or otherwise dealt with at sessions held under this Act, the same shall be heard and determined and otherwise dealt with at the sessions held under this Act in like manner as if the same were held by the same justices by whom the same would have been held if this Act had not passed. Sect. 116.

117. (1) Nothing in this Act shall prevent a person who is an existing justice of the peace for any of the counties of Middlesex, Surrey, or Kent, from continuing to be a justice of the peace for that county, and every such person and also every person who at the appointed day is a justice of the peace for the liberty and city of Westminster, the liberty of the Tower of London, or any liberty which by virtue of this Act becomes part of the county of London, shall, if and so long as he is resident or occupies property in the county of London, be a justice of the peace for that county in like manner as if he were assigned by a commission of the peace, but a person shall not after the passing of this Act be named in any commission as a justice of the peace for any liberty which by virtue of this Act becomes part of the county of London. As to existing justices in metropolis.

An existing justice for Middlesex will continue to be such justice, and as long as he is resident or occupies property in the county of London, he will also be a justice for that county: so also as to justices of Surrey and Kent. Justices are not hereafter to be appointed for liberties in London.

As to the merger of liberties in the county, see section 48, *ante*, p. 86.

(2) Provided always, that the provisions of this section shall not apply to any justice of the peace of the counties of Surrey, Kent, or Middlesex, or either of them, so long as he shall hold any office connected with any court of quarter sessions of the county of London.

(3) The persons who at the passing of this Act are members of a visiting committee of any prison situate in the county of London shall continue to form such visiting committee until a new visiting committee has been appointed in accordance with a rule of the Secretary of State.

(4) Where a person is a justice of the peace in and for the county of London by reason of his being personally declared by this Act to be a justice of the peace in and for the county of

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London, the Lord High Chancellor shall have the same power of removing such person from being a justice of the peace as if he were named in a commission of the peace.

A justice is personally declared by this Act to be a justice of the county of London by section 95 (1), *ante*, p. 154, and by sub-section (1) of this section.

Any justice may be discharged from the commission by writ under the Great Seal; 3 Burn's Justice, 123.

(5) The existing assistant judge of the court of the sessions of the peace for the county of Middlesex shall cease to be chairman of that court, and shall be the first chairman of the court of quarter sessions of the county of London, and while he holds his office he shall receive such salary, not less than what he has hitherto received, as Her Majesty, on the petition of the county council, may assign, and the enactments respecting the appointment and payment of a deputy assistant judge or of a person to preside at a second court at any sessions in the county of Middlesex shall apply to the county of London, and upon the said assistant judge ceasing to hold office shall be repealed.

The justices of the county of Middlesex will have a new chairman.

The enactments hereby repealed as to the appointment and payment of a deputy assistant judge, &c., in Middlesex are the 22 & 23 Vict. c. 4, s. 3; 37 & 38 Vict. c. 7, ss. 2—4. As to future appointments of chairman and deputy chairmen of quarter sessions in London, see section 42, *ante*, p. 77.

(6) Nothing in this Act shall affect existing deputy lieutenants appointed by the Constable of the Tower of London as Lord Lieutenant of the Tower Hamlets.

Existing Officers.

Existing clerks of the peace and other officers.

118. (1) A person holding office at the appointed day as clerk of the peace of a county, besides continuing to be such clerk of the peace shall, subject to the provisions respecting certain counties in this Act mentioned, become the clerk of the county council, and if appointed before the passing of this Act shall, notwithstanding anything in this Act, hold his office by the same tenure and have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace.

The clerk of the peace will become the clerk of the council, except in the cases specially mentioned in this section.

In future the clerk of the peace and the deputy clerk will be appointed under section 83 by the standing joint committee.

(2) A person holding office at the passing of this Act as clerk of the peace, clerk of the general assessment sessions, or salaried clerk

of a petty sessional division, shall be deemed to be an existing officer within the meaning of the provisions of this Act relating to compensation to existing officers who suffer pecuniary loss. Sect. 118. SUB-S. 2.

The provisions as to compensation are contained in section 120, *post*.
It will be remembered that the quarter sessions for the county of London will supersede the general assessment sessions; see section 42 (10), *ante*, p. 78.
As to petty sessional divisions and clerks, see section 84, *ante*, p. 144; in London, section 42 (8), *ante*, p. 78, and sub-section (11), *infra*.

(3) The person who at the appointed day is clerk of the peace for Sussex, if he held office at the passing of this Act, shall be clerk of the peace for East Sussex and clerk of the peace for West Sussex, and clerk of the peace for the justices of Sussex in general sessions assembled.

(4) Such person shall also be clerk of the county council for East Sussex, and clerk of the county council for West Sussex, and shall, notwithstanding anything in this Act, hold his offices by the same tenure, and have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace.

(5) The person who, at the appointed day, is clerk of the peace for Suffolk, if he held office at the passing of this Act, shall be clerk of the peace for East Suffolk and clerk of the peace for West Suffolk, and clerk of the peace for the justices of Suffolk in general sessions assembled.

(6) Such person shall also be clerk of the county council for East Suffolk and clerk of the county council for West Suffolk; and shall, notwithstanding anything in this Act, hold his offices by the same tenure and have the same power of appointing and acting by a deputy as heretofore.

As to future clerks of the peace in Sussex and Suffolk, see section 83, sub-sections (7), (8), *ante*, p. 142.

(7) This section shall apply to the persons holding office at the appointed day as clerk of the peace and deputy clerks of the peace for the county of Lancaster, in like manner as it applies to clerks of the peace of other counties.

See section 83 (9), *ante*, p. 143.

(8) The person who, at the appointed day, is clerk of the peace for Middlesex, if he held office at the passing of this Act, shall continue to be that clerk, and, subject to the provisions of this Act, shall also be the first clerk of the peace for the county of London, and shall, notwithstanding anything in this Act, hold the

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office of clerk of the peace for each of the said counties by the same tenure and have the same power of appointing and acting by a deputy as heretofore.

The clerk of the peace for Middlesex will be clerk of the council for that county. He will also be clerk of the peace for the city of London (see, however, sub-section (10), *infra*), but he will not be clerk of the London county council; see section 83 (11), *ante*, p. 143.

(9) The person who, at the appointed day, is the clerk of the gaol sessions in Yorkshire or Lincolnshire shall, if he holds office at the passing of this Act, continue to be that clerk, and shall also be the first clerk of the joint committee for the county councils of the three ridings or divisions of those counties, and shall hold that office by the same tenure and have the same power (if any) of acting by a deputy as heretofore.

As to the gaol sessions and the joint committee in Yorkshire and Lincolnshire, see section 46 (2), *ante*, p. 83.

(10) If the person who at the appointed day is clerk of the peace for Surrey held office at the passing of this Act, then so long as he holds that office,—

(*a*) He shall, besides continuing to be that clerk, continue to be clerk of the peace at any quarter sessions held for the county of London at Newington, and be, for the purpose of all business transacted at those quarter sessions, deemed to be the clerk of the peace for the county of London, and as such shall have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace for Surrey; and

(*b*) Such of the records of the county of Surrey as at the passing of this Act are in his custody at Newington, and, if this Act had not passed, would have remained in that custody, shall, subject to any order of the court of quarter sessions, continue to be kept in his custody at Newington.

(11) The persons who at the appointed day are salaried clerks for the petty sessional divisions, wholly or in part in the county of London shall, if appointed before the passing of this Act, be as to so much of such divisions as are in the county of London, the first salaried clerks of the petty sessional divisions of the county of London, and as to so much of such divisions as are not in the county of London, such persons shall also be the first salaried clerks of the petty sessional divisions of the counties in which such parts are situate.

Each portion of the existing division will be a separate petty sessional division. See section 42 (8), (9), *ante*, p. 78.

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(12) In the case of any of the following persons who, by virtue of this Act, become clerk of the peace for the county of London or salaried clerks of petty sessional divisions for the county of London, or who, for the purpose of all business transacted at the quarter sessions, held for the county of London at Newington, is to be deemed to be the clerk of the peace for the county of London, or who become clerk of the peace for East Sussex and clerk of the peace for West Sussex, or clerk of the peace for East Suffolk, and clerk of the peace for West Suffolk, their services as such clerks after the appointed day in the county of London, or in the administrative counties of East Sussex and West Sussex, or East Suffolk and West Suffolk, respectively, shall be deemed to be a continuous service with their service as clerks of the peace and clerks of petty sessional divisions in the counties of Middlesex, Surrey, and Kent respectively, and clerk of the peace for Sussex and Suffolk respectively.

This may be important in reckoning the duration of service for the purposes of section 120, *post*.

(13) All persons who at the appointed day hold office as county treasurer, county auditor, county solicitor, or county surveyor, or are officers (whether inspectors of weights and measures, public analysts, inspectors of petroleum or explosives, or other) of the quarter sessions or justices of the county, or of the assessment sessions in the metropolis, or any committee of such justices or any committee of visitors for lunatic asylums, or are servants under such sessions or justices and perform any duties in respect of the business transferred by or in pursuance of this Act to the county council, shall become the officers and servants of the county council.

The services of these officers will continue without charge, save that in respect of the transferred business they will be officers of the county council.

(14) All persons who at the appointed day are officers and servants of the Metropolitan Board of Works shall become the officers and servants of the London county council.

The Metropolitan Board of Works will be superseded by the London county council, see section 40 (8), *ante*, p. 74.

(15) Every person who, on the appointed day, is the chief or other constable of the police force of any county, or is an officer or servant employed in connection with that force, shall, after the said

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day, be chief or other constable of the police force of the same county under the standing joint committee appointed in pursuance of this Act, or be an officer or servant of a county council appointing a portion of such joint committee, as the case may be.

This transfers the chief and other constables to the control of the standing joint committee under section 34, *ante*, p. 50. See section 119 (4), *post*.

(16) Where any constable at the appointed day belongs to the police force of any borough the council of which will by virtue of this Act cease to maintain a separate police force, such constable shall, after the said day, become a constable of the county police force, and the provisions of this Act with respect to officers of any authority who become officers of the county council shall apply to such constable, with the substitution of the standing joint committee for the county council.

The boroughs which will by virtue of this Act cease to have a separate police force are the smaller boroughs under sections 39, *ante*, p. 70. See also section 119 (4), *post*.

As to officers transferred to county councils.

119. (1) The officers and servants of the quarter sessions or general assessment sessions, or justices, or any committee of such sessions, or justices, or of any committee of visitors for lunatic asylums, or of the Metropolitan Board of Works, or other authority, who hold office at the passing of this Act, and who by virtue of this Act become officers and servants of a county council (in this Act referred to as existing officers), shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties, shall receive not less salaries or remuneration, and be entitled to not less pensions (if any), than they would have if this Act had not passed, and where any such officer can only be removed with the consent of a Secretary of State of the Local Government Board, such consent shall be part of the tenure of his office.

The officers and servants here referred to are those mentioned in section 118. The consent of the Local Government Board is required for the removal of a medical officer of health or inspector of nuisances under section 191 of the Public Health Act, 1875, set out *ante*, p. 45.

(2) The county council may distribute the business to be performed by existing officers in such manner as the council may think just, and every existing officer shall perform such duties in relation to that business as may be directed by the council.

This gives the county councils power to require officers to perform duties different from those they have previously had to perform.

(3) The county council may abolish the office of any existing officer whose office they may deem unnecessary, but such officer shall be entitled to compensation under this Act. Sect. 119. Sub-s. 3.

As to compensation, see section 120, *post*.

(4) The provisions of this section shall apply to the chief and other constables of any police force, and to any officers employed in connection with such force, in like manner as if they were herein re-enacted with the substitution of the standing joint committee under this Act for the county council.

See section 118, sub-sections (15), (16), *ante*.

120. (1) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office. Compensation to existing officers.

Regard is to be had to the following considerations in fixing the amount of compensation :

1. The loss must a direct pecuniary loss.
2. The conditions of appointment must be considered, *e.g.*, whether the appointment is at pleasure, or for life as in the case of a coroner.
3. The nature of the office or employment, *e.g.*, the office may be an important public office, or it may be that merely of a clerk.
4. The duration of his service. For this purpose his service under the quarter sessions, &c., and under the county is to be deemed to be continuous ; see section 118, sub-section (12), *ante*, p. 181.
5. Additional emoluments under or in consequence of the Act.
6. Emoluments which might have been acquired but for the refusal to accept an office under the Act.
7. The circumstances of the case.

The Civil Service scale is regulated by 22 Vict. c. 66. It is, for a person who has served ten years or upwards, ten-sixtieths of his salary, and a further addition of one-sixtieth for every year's service over ten up to forty years.

Sect. 120. Sub-s. 2.

(2) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.

5 & 6 Will. 4, c. 62.

It appears from this that a claimant is entitled to compensation though he may have been in office for a period less than five years.

(3) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so what amount, ought to be granted to the claimant, and such determination shall be final.

The Treasury means the Commissioners of the Treasury. See section 100, *ante*, p. 156.

(5) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

Any member of the council may require the claimant to attend, but he cannot be examined on oath unless a justice is there to administer it. The chairman is, however, a justice *ex officio*; see section 2, sub-section (5), *ante*, p. 4. Once sworn, the claimant may be interrogated by any member.

(6) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by

the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same. Sect. 120. Sub-s. 6.

It is difficult to suggest why this debt should be deemed to be a specialty debt or what advantage is derived from this provision. A specialty debt, like any other, is enforceable by action, and its only advantage over simple contract debts is that the statutory period of limitation is twenty years, as compared with six years.

(7) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

This provision prevents an officer from obtaining compensation and then getting appointed to another office, thus drawing, as it were, two salaries.

(8) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.

As to general county purposes, see section 68, *ante*, p. 110.

Temporary Provision as to Grant from Exchequer.

121. (1) In the financial year ending the thirty-first day of March, one thousand eight hundred and eighty-nine, the Commissioners of Inland Revenue shall from time to time, in such manner and under such regulations as the Treasury from time to time make, pay into the Bank of England to the Local Taxation Account— Grant and application of part of probate duty and of horse and wheel tax during the year ending 31st March 1889.

(*a*) Such sum as may be ascertained in manner provided by the said regulations to be four-fifth parts of one-third of the proceeds of the sums collected by them in the said year in respect of the probate duties, and for the purpose of this section, the expression "probate duties" means the stamp duties charged on the affidavit required from persons applying for probate or letters of administration

Sect. 121. Sub-S. 1 *a*.

in England, Wales, or Ireland, and on the inventory exhibited and recorded in Scotland, and the stamp duties charged on such accounts of personal and movable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, and includes the proceeds of all penalties and forfeitures recovered in relation to such stamp duties; and

41 & 45 Vict. c. 12.

(*b*) Such sum as may be ascertained in manner provided by the regulations to be the proceeds of the sums collected by them in the said year in respect of the duties on licenses for trade carts, locomotives, horses, mules, and horse dealers under any Act of the present session.

This temporary provision has to be made, seeing that section 24, *ante*, p. 40, will not come into operation until after the 31st March, 1889.

As to the Local Taxation Account, see section 20, *ante*, p. 33.

As to the probate duties, see section 21, *ante*, p. 35.

As to the duties on licenses for trade carts, &c., see the notes to section 34, *ante*, p. 59.

(2) The sums so paid shall be distributed by the Local Government Board as follows, that is to say,

(i.) In paying to every county, highway, and other local authority who have heretofore received out of moneys provided by Parliament a contribution to the costs of roads, or to the successors of such authority, sums calculated in like manner and according to the like scale and regulations as in the financial year ending on the thirty-first day of March, one thousand eight hundred and eighty-eight;

This contribution is in aid of the cost of disturnpiked and main roads.

(ii.) If the amount received by the local taxation account from the duties on licenses for trade carts, locomotives, horses, mules, and horse dealers under any Act of the present session exceeds the sum so payable to county and highway or other local authorities, the excess shall be divided between the metropolis and quarter sessions boroughs, in proportion to their rateable value, as ascertained by the valuation lists, or where there is no valuation list by the last poor rate;

As to the duties on these licenses, see the note to section 34, *ante*, p. 59. If the amount of these duties exceeds the sum payable under paragraph (i.) the excess is to be divided as here mentioned.

(iii.) The share of the excess distributed to the metropolis shall be divided between the Commissioners of Sewers in the

city of London and the vestries and district boards in the parishes in Schedule A. and the districts in Schedule B. to the Metropolis Management Act, 1855, as amended by subsequent Acts, according to rateable value as ascertained by the last valuation lists, and the share distributed to quarter sessions boroughs shall be paid to the councils of such boroughs; 18 & 19 Vict. c. 190.

The share of the excess mentioned in paragraph (ii.) as payable to the metropolis is to be apportioned as herein stated.

(iv.) If any payment is made under the foregoing provisions of this section respecting roads to the council of any quarter sessions borough, or to any authority for a highway area wholly or partly situate in such borough, or to the highway authority of any parish or district in the metropolis, the share of such quarter sessions borough, parish, or district in the distribution of the balance shall be reduced by the amount of the said payment, and, if less than that amount, shall not be paid, and any sum arising from such reduction or non-payment shall be added to the balance and distributed accordingly;

From any sum payable under (iii.) or (iv.) the amount paid under (i.), if any, is to be deducted as herein stated.

(v.) Any sum payable in pursuance of this section to a county authority or the council of any borough, not being a highway authority, shall be paid to the county or borough fund as the case may be, but any other sum payable under the provisions of this section respecting roads, or respecting the division of the excess to any highway authority, commissioners of sewers, vestry, or district board, shall be applied in aid of the costs of the roads maintained by such authority, commissioners, vestry, or board;

For the definition of a highway authority, see section 100, *ante*, p. 157. The council of a borough are the highway authority in all cases, save, perhaps, those for which provision is made in section 52.

(vi.) Any balance remaining after the above payments shall be divided among the counties in England and Wales, in accordance with the provisions of this Act with respect to the division of the probate duty grant, and for the

Sect. 121. Sub-s. 2.

purpose of such division the metropolis shall be deemed to be a county, and the share assigned to each county on such division shall be applied towards paying to the guardians of each poor law union wholly or partly situate in the county such sum as is directed by this Act to be annually paid by the county council of such county to such guardians;

The division of the probate duty grant is regulated by section 22, *ante*, p. 36.

The sums directed by this Act to be paid to guardians are stated in section 24, *ante*, p. 40, and section 26, *ante*, p. 47.

(vii.) Any balance remaining after the payment to the guardians of such union shall be paid to the county council of the county upon its coming into office, and, if there is any county borough in the county, the sum so paid shall be included in the adjustment under this Act between the councils of the county and borough.

The county council will come into office on 1st April, 1889. See section 105 (1), *ante*, p. 164.

As to the adjustment herein referred to, see section 32, *ante*, p. 52.

(3) Every local authority shall produce to the Local Government Board such evidence and comply with such rules as the Board may require or make for the purpose of effecting the distribution under this section.

(4) A certificate of the Local Government Board of the sum due to any authority under this section may be varied by that Board, but unless so varied shall be final.

(5) The Treasury may, from time to time during the financial year ending on the thirty-first day of March next after the passing of this Act, issue out of the Consolidated Fund or the growing produce thereof and pay to the Local Taxation Account such sums as appear to them to be required for the purpose of paying the highway authorities and county authorities such sums in respect of main roads as have been paid to them in previous years out of moneys provided by Parliament; and the sums so issued shall be treated as an advance, and shall be repaid to the Consolidated Fund out of the Local Taxation Account before any balance is distributed in manner provided by this section.

Savings.

122. (1) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or of any property by this Act transferred to a county council; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to the county council under this Act shall be discharged, paid, and satisfied by such council. Sect. 122. Sub-s. 1. Saving for existing securities and discharge of debts.

(2) Where for the purpose of satisfying any such security or any debt or liability, it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for the provisions of this Act, such rate may continue to be levied and power to be exercised either by the authority who otherwise would have levied or exercised the same or by the county council as the case may require.

(3) It shall be the duty of every authority whose powers, duties, and liabilities are transferred to any council by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.

123. All such bye-laws, orders, and regulations of the Privy Council, Secretary of State, Board of Trade, Local Government Board, or Government department, or of any quarter sessions, council of a borough, the Metropolitan Board of Works, or other authority, whose powers and duties are transferred by or in pursuance of this Act to any county council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if they had been made by such council, subject, nevertheless, to revocation or alteration by such council in the manner in which bye-laws can be made by such council, and also to any exceptions or modifications which may be made at the time of the transfer. Saving for existing bye-laws.

124. (1) If at the date of the transfer in this section mentioned any action or proceeding, or any cause of action or proceeding, is pending or existing by or against any authority in relation to any powers, duties, liabilities, or property by this Act transferred to the county council, the same shall not be in anywise prejudicially affected by reason of the passing of this Act, but may be con- Saving for pending actions, contracts, &c.

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tinued, prosecuted, and enforced by or against such council as successors of the said authority in like manner as if this Act had not been passed.

(2) All contracts, deeds, bonds, agreements, and other instruments entered into or made and subsisting at the time of the transfer in this section mentioned, and affecting any such powers, duties, liabilities, or property of any authority as are by this Act transferred to a county council, shall be of as full force and effect against or in favour of the council, and may be enforced as fully and effectually as if, instead of the authority, the said council had been a party thereto.

(3) All contracts or agreements which, prior to the appointed day, have been made by the clerk of the peace or any justice or justices or otherwise on behalf of a county, or any division or part of a county, shall have effect as if the council of that county had been named therein instead of the clerk of the peace or such justice or justices, and may be enforced by or against the county council accordingly.

(4) This section shall apply in the case of a committee of any authority in like manner as if the committee were such authority and the committee of a county council were that council, and as if contracts and agreements by any such committee appointed by quarter sessions were contracts and agreements on behalf of a county.

Saving for charters, local Acts, &c.

125. Save as far as may be necessary to give effect to this Act or any scheme or order or other thing made or done thereunder, nothing in this Act shall prejudicially alter or affect the powers, rights, privileges, or immunities of any municipal corporation, or the operation of any municipal charter, local Act of Parliament, or order confirmed by Parliament, which immediately before the passing of this Act was in force.

This section was really unnecessary.

Repeals.

Repeal of Acts.

126. All enactments inconsistent with this Act are hereby repealed; Provided that—

(1) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act:

(2) This repeal shall not affect— Sect. 126. Sub-s. 2.

(*a*) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

(*b*) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed; or

(*c*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*d*) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

It will be very difficult to bear in mind all the provisions of this Act so as to give effect to this section.

SCHEDULES.

FIRST SCHEDULE. Section 20.

Local Taxation Licenses.

Licenses for the sale of intoxicating liquor for consumption on the premises;

Retailers of spirits (publicans).
Retailers of spirits, occasional licenses.
Retailers of beer.
Retailers of beer, occasional licenses.
Retailers of beer and wine.
Retailers of cider.
Retailers of wine.
Retailers of wine, occasional licenses.
Retailers of sweets.

Licenses for the sale of intoxicating liquor by retail, by persons not licensed to deal therein, for consumption off the premises;

Retailers of beer.
Retailers of beer and wine.
Retailers of cider.
Retailers of wine.
Retailers of sweets.
Retailers of table beer.

Licenses to deal in game.

Sched. 1. Licenses for—

Beer dealers.	Carriages.
Spirit dealers.	Trade carts.
Sweets dealers.	Locomotives.
Wine dealers.	Horses and mules.
Refreshment house keepers.	Horse dealers.
Dogs.	Armorial bearings.
Killing game.	Male servants.
Guns.	Hawkers.
Appraisers.	House agents.
Auctioneers.	Pawnbrokers.
Tobacco dealers.	Plate dealers.

These are the licenses the duties payable on which are transferred to the county council under section 20, *ante*, p. 33. As to the duties on trade carts, locomotives, horses and mules, and horse dealers, see the note to section 34, *ante*, p. 59.

Section 71.

SECOND SCHEDULE.

Alteration of Schedule to District Auditors Act, 1879 (42 & 43 *Vict. c.* 6).

The following scale shall, until otherwise determined by Parliament, be substituted for so much of the scale set forth in the First Schedule to the District Auditors Act, 1879, as relates to expenditure amounting to 100,000*l.* and upwards :—

Where the Total of the Expenditure comprised in the Financial Statement is	The Sum shall be
100,000*l.* and under 150,000*l.*	50*l.*
150,000*l.* and under 200,000*l.*	60*l.*
200,000*l.* and upwards	15*l.* in addition for every 50,000*l.* or part thereof.

The District Auditors Act, 1879, section 2, provides as follows :—

"After the twenty-fifth day of March, one thousand eight hundred and seventy-nine, all payments to district auditors out of any local rate shall cease, and the whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty for the use of Her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned."

The First Schedule to the Act is as follows:— Sched. 2. NOTE.

Scale of Stamp Duties payable by Local Authorities.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under 20*l.*	5*s.*
20*l.* and under 50*l.*	10*s.*
50*l.* and under 100*l.*	1*l.*
100*l.* and under 500*l.*	2*l.*
500*l.* and under 1,000*l.*	3*l.*
1,000*l.* and under 2,500*l.*	4*l.*
2,500*l.* and under 5,000*l.*	5*l.*
5,000*l.* and under 10,000*l.*	10*l.*
10,000*l.* and under 20,000*l.*	15*l.*
20,000*l.* and under 50,000*l.*	20*l.*
50,000*l.* and under 100,000*l.*	30*l.*
100,000*l.* and upwards	50*l.*

For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

Section 71, *ante*, p. 116, modifies the above schedule to the extent mentioned in the text.

THIRD SCHEDULE.

Sections 31, 34, 35, 36, 69.

County Boroughs.

Name of Borough.	Name of County in which, for the purpose of this Act, the Borough is deemed to be situate.
Barrow	Lancaster.
Bath	Somerset.
Birkenhead	Chester.
Birmingham	Warwick.
Blackburn	Lancaster.
Bolton	Lancaster.
Bootle-cum-Linacre	Lancaster.
Bradford	York, West Riding.
Brighton	Sussex.
Bristol	Gloucester and Somerset.
Burnley	Lancaster.
Bury	Lancaster.
Canterbury	Kent.
Cardiff	Glamorgan.
Chester	Chester.
Coventry	Warwick.

Sched. 3.

Name of Borough.	Name of County in which, for the purpose of this Act, the Borough is deemed to be situate.
Croydon	Surrey.
Derby	Derby.
Devonport	Devon.
Dudley	Worcester.
Exeter	Devon.
Gateshead	Durham.
Gloucester	Gloucester.
Great Yarmouth	Norfolk and Suffolk.
Halifax	York, West Riding.
Hanley	Stafford.
Hastings	Sussex.
Huddersfield	York, West Riding.
Ipswich	Suffolk.
Kingston-upon-Hull	York, East Riding.
Leeds	York, West Riding.
Leicester	Leicester.
Lincoln	Lincoln (parts of Lindsey)
Liverpool	Lancaster.
Manchester	Lancaster.
Middlesborough	York, North Riding.
Newcastle-upon-Tyne	Northumberland.
Northampton	Northampton.
Norwich	Norfolk.
Nottingham	Nottingham.
Oldham	Lancaster.
Plymouth	Devon.
Portsmouth	Hants.
Preston	Lancaster.
Reading	Berks.
Rochdale	Lancaster.
Saint Helen's	Lancaster.
Salford	Lancaster.
Sheffield	York, West Riding.
Southampton	Hants.
South Shields	Durham.
Stockport	Chester and Lancaster.
Sunderland	Durham.
Swansea	Glamorgan.
Walsall	Stafford.
West Bromwich	Stafford.
West Ham	Essex.
Wigan	Lancaster.
Wolverhampton	Stafford.
Worcester	Worcester.
York	York, North, East, and West Ridings.

The provisions of the Act relating to county boroughs are contained in sections 31—34, *ante*, p. 52.

THE MUNICIPAL CORPORATIONS ACT, 1882.

(45 & 46 VICT. CAP. 50.)

THE following sections and schedules of this Act are incorporated with the Local Government Act, s. 75, *ante*, p. 120. Some other sections of this Act are referred to in the Local Government Act, but these are set out in the notes to the sections of that Act containing such references.

The notes to the following sections have been for the most part limited to their application to county councils.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Name.

Name of municipal corporation.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

This section does not really apply to county councils, for by section 79 of the Local Government Act, *ante*, p. 136, the council of each county are incorporated by the name of the county council, with the prefix of the name of the administrative county. By section 34, sub-section (1), of the same Act, *ante*, p. 58, the mayor, aldermen, and burgesses of each borough mentioned in the Third Schedule, that is, of the county boroughs acting by the council, have all the powers and duties of the county council within the borough; but this involves no change of the name of the borough or city.

Burgesses.(*a*)

Qualification of burgess.

9. (1) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.(*b*)

(2) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows:(*c*)

(*a*) Is of full age; and

(*b*) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation,(*d*) joint or several,(*e*) of any house, warehouse, counting-house, shop, or other building(*f*) (in this Act referred to as qualifying property) in the borough;(*g*) and

Sect. 9. Sub-s. 2.

(*c*) Has during the whole of those twelve months resided in the borough, or within seven miles thereof;(*h*) and

(*d*) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate;(*i*) and

(*e*) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January.(*k*)

(3) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(*a*) Is an alien;(*l*) or

(*b*) Has within the twelve months aforesaid received union or parochial relief or other alms;(*m*) or

(*c*) Is disentitled under any Act of Parliament.(*n*)

(*a*) It is provided by the County Electors Act, 1888, 51 Vict. c. 10, s. 2, that "for the purpose of the election of county authorities in England the burgess qualification, that is to say, the qualification enacted by section 9 of the Municipal Corporations Act, 1882, shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification shall be entitled to be registered under the Act as a county elector in the parish in which the qualifying property is situate. Sections 9, 31, 33, and 63 of the Municipal Corporations Act, 1882, and any enactments of that or any other Act affecting the same, shall extend to so much of every county as is not comprised within the limits of a municipal borough, in like manner as if they were herein re-enacted, with the substitution of 'county' for 'borough,' and of 'county elector' for 'burgess,' and with the other necessary modifications."

(*b*) By section 45, sub-section (8), *post*, every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

By section 63, *post*, women may be enrolled as burgesses, and by that section, as applied by the County Electors Act, 1888, 51 Vict. c. 10, s. 2, sub-sect. (2), women may also be enrolled as county electors.

(*c*) This is no longer the only qualification of a burgess or county elector. It is provided by the County Electors Act, 1888, 51 Vict. c. 10, s. 3, that every person who is entitled to be registered as a voter in respect of a 10*l*. occupation qualification within the meaning of the provisions of the Registration Act, 1885, which are set out in the schedule to that Act, shall be entitled to be registered as a county elector, and to be enrolled as a burgess, in respect of such qualification, in like manner in all respects as if the section of the Municipal Corporations Act, 1882, relating to a burgess qualification included the said 10*l*. occupation qualification. The schedule to the 51 Vict. c. 10, above referred to, is as follows:—

Definition of Ten Pounds Occupation Qualification.

A person entitled to be registered as a voter in respect of a ten pounds occupation qualification in a borough, municipal or parliamentary—

(*a*) must during the whole twelve months immediately preceding the fifteenth day of July have been an occupier as owner or tenant of some land or tenement in a parish [or township] of the clear yearly value of not less than ten pounds; and

Sect. 9. NOTE.

(*b*) Must have resided in or within seven miles of the borough during six months immediately preceding the fifteenth day of July ; and

(*c*) Such person, or some one else, must during the said twelve months have been rated to all poor rates made in respect of such land or tenement ; and

(*d*) All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the fifth day of January next before the registration, or on account of any assessed taxes due before the said fifth day of January, must have been paid on or before the twentieth day of July.

If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a voter.

If a person has occupied in the borough different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as a voter in the parish [or township] in which the last occupied land or tenement is situate.

(*d*) *Occupation.*

It is provided by section 257, sub-section (3), *post*, that nothing in this Act shall entitle any person to be enrolled as a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of these universities.

By section 33, sub-section (2), *post*, the qualifying property need not be throughout the twelve months constituting the period of qualification the same property, or in the same parish.

For the distinction between an occupier and a lodger the following cases may be referred to :—*Bradley* v. *Baylis*, 8 Q. B. D. 194 ; 51 L. J. Q. B. 183 ; 46 L. T. (N.S.) 253 ; 30 W. R. 823 ; 45 J. P. 847 ; *Ancketill* v. *Baylis*, 10 Q. B. D. 577 ; 52 L. J. Q. B. 104 ; 48 L. T. (N.S.) 343 ; 31 W. R. 233 ; 47 J. P. 356.

Occupation of a dwelling-house by virtue of an office, service, or employment within the meaning of 48 Vict. c. 3, s. 3, is no qualification for the municipal franchise. *McClean* v. *Prichard*, 20 Q. B. D. 285. This decision will also apply to county electors.

As to occupation on succession by descent, marriage, &c., see section 33, *post*.

(*e*) The words "joint or several" were inserted with reference to the decision in *Reg.* v. *The Mayor, &c. of Exeter*, L. R. 4 Q. B. 114, *post*.

It is provided by section 31, *post*, that where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

(*f*) *House, warehouse, &c.*

By section 31, *post*, the terms house, warehouse, counting-house, shop, or other building, include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession ; and any such part may for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

It will be observed that the text requires occupation of some building. The alternative qualification under section 3 of the County Electors Act, 1888, already mentioned (see note (*c*) *supra*), requires occupation only of some land or tenement.

Upon the meaning of these terms reference may be made to the following cases :—

The word "house" means *primâ facie* a dwelling-house. *Surnam* v. *Darley*, 14 M. & W. 181 ; *Nunn* v. *Denton*, 8 Scott, N. R. 794 ; *Daniel* v. *Coulsting*, *ib.* 949. It probably means a dwelling-house in the above section, contrasted as it is with places of business. It should be observed that the

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meaning of a word may vary considerably according to the purposes and objects of the Act in which it is used. Consequently, the decisions on the meaning of the word "house" as used in the Metropolis Management and Public Health Acts must not be taken to apply generally. Under these Acts a church has been held not to be a house, while a dissenting chapel is a house. *Angell* v. *Paddington Vestry*, L. R. 3 Q. B. 714 ; 37 L. J. M. C. 171 ; 32 J. P. 742 ; *Caiger* v. *St. Mary, Islington* (*Vestry of*), 50 L. J. M. C. 59 ; 45 J. P. 570 ; *Wright* v. *Ingle*, 16 Q. B. D. 379 ; 55 L. J. M. C. 17 ; 34 W. R. 221. On the other hand, a church has been held to be a house within the meaning of a bye-law prescribing a building line. *Folkestone* (*Mayor, &c., of*) v. *Woodward*, L. R. 15 Eq. 159 ; 42 L. J. Ch. 782. It may be doubted whether these decisions throw any light on the meaning of the word "house" as used in the text.

"Counting-house" includes a solicitor's office. *Re Creek*, 3 B. & S. 459.

The words "or other building" must be read as signifying other buildings *ejusdem generis*, according to the well-known rule for the construction of statutes. The words are almost precisely similar to those in the Reform Act, 2 Wm. 4, c. 45, s. 27. Under that Act a stable built of stone and having a tiled roof was held to be a building. *Whitmore* v. *Bedford*, 5 M. and G. 9 ; 13 L. J. C. P. 55. Rooms in a factory were let to cotton spinners separately, the rents varying according to the size of the room. The approach to the room was either by a common staircase leading from the entrance to the factory (to which there was a door which was never fastened), or by separate outside staircases, or by doors opening into the yard. Each tenant had his own spinning machine (which was worked by a steam-engine belonging to the landlord), it being part of each contract that the landlord should supply steam power), and also the exclusive use of his room, and the key to the door thereof. It was held that the occupier of each room was the exclusive occupier of a building within the meaning of 2 Wm. 4, c. 45, s. 27. *Wright* v. *Stockport* (*Town Clerk of*), 5 M. & G. 33 ; 13 L. J. M. C. 50. A shed stood against a wooden paling, but was not fastened to it. Six posts put into the ground supported a tarpaulin or tar cloth which formed the roof. One of the sides of the shed was boarded up with boards fastened to the posts by nails. It was held that the shed was a building. *Watson* v. *Cotton*, 5 C. B. 51 ; 17 L. J. C. P. 68. The tenant of land in a borough erected thereon at his own expense a wooden structure with boarded sides and a thatched roof, and supported by wooden posts let into the ground, and used the same for storing potatoes and other things connected with his business of a market gardener. It was held that the shed was a building. The tenant had erected in like manner on the land a pigstye with a slated roof, but in other respects similar to the structure before mentioned. *Semble*, that this was not a building. But where an electioneering agent, for the purpose of creating a vote, erected a shed made of wood having four boarded sides and a boarded roof and being supported by four posts let into the ground, the Court, acting on *Cook* v. *Humber*, 11 C. B. (N.S.) 33, held that this was not a building. ERLE, C. J., said that an erection to be a building within the Act ought to be in some degree adapted to be used by man either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building. *Powell* v. *Farnie*, *Powell* v. *Boraston*, 18 C. B. (N.S.) 168, 175 ; 34 L. J. C. P. 73 ; 11 L. T. (N.S.) 736 ; 11 Jur. (N.S.) 162. A stone building having four walls and a door, used by the tenant for keeping guano and other manures used upon the adjoining land, was held to be a building. So also a stone building roofed, having three sides, and being open in front, with a loft over, used only for milking a cow and keeping a pig, was held a building ; and similar erections used only for keeping hay or affording shelter to cattle were held to be buildings. *Morrish* v. *Harris*, L. R. 1 C. P. 156 ; 35 L. J. C. P. 101.

These cases indicate with tolerable clearness what is a building within the meaning of the text. The decisions on the meaning of the word in other Acts, such as the Public Health Acts, can hardly be cited as authorities upon

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the construction of the text, having regard to the different objects of the statutes. Some of the more important of these may, however, be enumerated. *Tunstall Turnpike Trustees* v. *Lowndes*, 20 J. P. 374; *Reg.* v. *Gregory*, 5 B. & Ad. 555; 3 L. J. M. C. 25; *Stevens* v. *Gourlay*, 7 C. B. (N.S.) 99; 1 F. & F. 498; 29 L. J. C. P. 1; 1 L. T. (N.S.) 33; *Poplar Board of Works* v. *Knight*, E. 13 & E. 408; 28 L. J. M. C. 37; 5 Jur. (N.S.) 196; *Bowes* v. *Lowe*, L. R. 9 Eq. 636; *Thompson* v. *Sunderland Gas Company*, 2 Ex. D. 429; *Fielding* v. *Rhyl Improvement Commissioners*, 3 C. P. D. 272; *Richardson* v. *Brown*, 49 J. P. 661.

(*g*) The qualifying property need not during the whole qualifying year be the same property or in the same parish. See section 33, *post.*

(*h*) *Residence.*

It is provided by the 48 Vict. c. 9, that from and after the passing of that Act (1885) a man shall not be disqualified from being enrolled or voting as a burgess at any municipal election in a borough, in respect of the occupation of any house, by reason only that during a part of the qualifying period, not exceeding four months in the whole, he has, by letting or otherwise, permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough.

The term "residence" has always to be interpreted with reference to the purpose of the statute in which it is used. See *Blackwell* v. *England*, 27 L. J. Q. B. 124. As used in the text it has evidently the same meaning as it has in the Parliamentary Registration Acts, and the following cases decided with reference to these Acts and to the corresponding provisions of the Municipal Corporations Act, 1835, will serve to explain the text. A., a freeman of the borough of T., resided with his wife and family and carried on his business of a wine merchant at G., more than seven miles from T. He paid ninepence a week for the use of a bedroom and a dark closet in the house of a friend at T., A. keeping the key of the closet, in which he deposited wine samples. He slept in the bedroom twelve times in six months. It was held that he had not resided in T. during the twelve months. *Whithorn* v. *Thomas*, 7 M. & G. 1. It was held in *Powell* v. *Guest*, 18 C. B. (N.S.) 72; 34 L. J. C. P. 69; 11 L. T. (N.S.) 599, that a man had not resided in a borough when he had for a portion of the qualifying period been detained in a gaol situate more than seven miles distant therefrom under a sentence of imprisonment for an assault without the option of paying a fine. A., after carrying on business and residing at Exeter for many years, went to live in London. He continued his business, which compelled him often to visit Exeter, and he kept some offices and rooms there. He was in Exeter about twenty times during the period from Michaelmas to July, staying each time from four to ten days. On these occasions he always transacted his business, slept, and took some of his meals in his own rooms. It was held that the question was one of fact, and depended upon whether there had been such a degree of inhabitance as to be in substance and in common sense a residence, and that there was sufficient residence to show that A. had a residence in Exeter as well as in London. *Reg.* v. *Exeter* (*Mayor of*), *Wescomb's Case*, L. R. 4 Q. B. 110; 19 L. T. (N.S.) 397. A. occupied a house in Exeter jointly with his partner, and carried on his business there. He had the exclusive use of a furnished bedroom and sitting-room. He lived more than seven miles from Exeter. He visited Exeter every day, except Sundays, to attend to his business, which he always transacted at this house, and sometimes he took his meals and slept there. It was held that this did not make him an inhabitant householder within the meaning of 5 & 6 Will. 4, c. 76, s. 9. *Reg.* v. *Mayor of Exeter*, *Dipstale's Case*, L. R. 4 Q. B. 114; 19 L. T. (N.S.) 432. Under the corresponding Irish Act it was held that where a man had within the city of Cork a store to which was attached a room in which he had a bed, and occasionally slept and took his meals, he did not reside so as to be an inhabitant householder. *McDougal* v. *Creedon*, 7 Ir. Rep. C. L. 165. But it was held that to qualify

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under 5 & 6 Will. 4, c. 76, s. 9, it was sufficient for a municipal officer to have a *bonâ fide* place of residence, although from fortuitous circumstances he did not sleep there. *Reg.* v. *Boycott*, 14 L. T. (N.S.) 599. A clergyman claimed to be qualified to vote for a borough in respect of the occupation of a dwelling-house in which he usually resided. He entered into an arrangement with another clergyman by which they agreed to exchange duties and residences for a certain period for the purpose of obtaining relaxation and change of scene. In pursuance of this arrangement the claimant left his house and resided for two months, which included the last month of the qualifying year, at a distance of more than seven miles from the borough, in the house of the other clergyman, who came and resided during the same period in the claimant's house. It was held there was a break of residence which prevented the claimant from being duly qualified. *Ford* v. *Pye*, L. R. 9 C. P. 269; 43 L. J. C. P. 21. The claimant, a freeman of a borough, was an officer in the army serving with his regiment. When he obtained leave of absence, which he usually did for three months in the year, he used to reside at the house of his mother, within seven miles of the borough, occupying apartments there which were always reserved for his use. He was unmarried, and had no other home than his mother's house. It was held that in the case of an officer subject to the will and pleasure of the Queen, and who was not therefore *sui juris*, there could not be such an intention of returning as to constitute a constructive residence, and consequently that the claimant was not qualified. *Ford* v. *Hart*, L. R. 9 C. P. 273; 43 L. J. C. P. 24; 29 L. T. (N.S.) 685. The incumbent of a benefice was absent from October to June, having obtained a license for non-residence. He arranged with a curate to take his duties and live in the rectory-house. He could not have returned without providing another residence for the curate. It was held that the incumbent had not resided in the house. *Durant* v. *Carter*, L. R. 9 C. P. 261. A. occupied lodgings in a borough in London separately and as sole tenant for the qualifying period. He had also a house in the country, where he kept an establishment of servants all the year round. When in London he resided at his lodgings, and had done so at intervals for two months out of the twelve. This was held a sufficient residence to entitle him to the lodger franchise. *Bond* v. *St. George, Hanover Square* (*Overseers of*), L. R. 6 C. P. 312. A. being employed to attend upon a gentleman, lodgings were taken for him in the same house as the gentleman, in which he might and did usually sleep, but he was not bound by his agreement to do so. A. had also lodgings in the borough of C., where his wife and children resided, and in which he could sleep at any time, and did in fact sleep at least once a week. It was held that A. resided in C. Bovill, C. J., said he could not distinguish the case from that of a man who has two houses and lives at each when he pleases. In such a case he would reside at both houses. *Taylor* v. *St. Mary Abbots, Kensington*, L. R. 6 C. P. 311. (The last two of the preceding cases are important as showing that a person may reside in more than one place, and it may be anticipated that many cases of this kind will arise in the application of this section to county electors.) For a portion of the qualifying period A. lived and slept with his wife and child in a room in a cottage allotted to the wife's mother by the trustees of a charity, the rules of which prohibited the inmates from allowing any stranger to reside with them. It was held that this was a sufficient residence to satisfy 2 Will. 4, c. 45, s. 33, and that the continuity of residence was not broken by A.'s absenting himself for one night when sent to London upon his employer's business. *Beal* v. *Ford*, 3 C. P. D. 73; 47 L. J. C. P. 56; 37 L. T. (N.S.) 468. During part of the qualifying period a freeholder who had a bedroom kept for his exclusive use in his father's house in Exeter was absent, serving under articles to a solicitor in London. It was held that, being bound by the articles, he could not be deemed to have had either the liberty or intention to return to the room whenever he liked, and therefore had not resided within the city during the required time. *Ford* v. *Drew*, 5 C. P. D. 59; 49 L. J. C. P. 172; 41 L. T. (N.S.) 478. And see on a similar point *Ford* v. *Barnes*, 16 Q. B. D. 254; 55 L. J. Q. B. 24; 53 L. T. (N.S.) 675; 34 W. R. 75; 50 J. P. 23; *Spittall* v.

Brook, 18 Q. B. D. 426; 56 L. J. Q. B. 48; 56 L. T. (N.S.) 364; 35 W. R. 520. The appellant had a bedroom kept for his exclusive use in his father's house in Exeter. During the qualifying year he went to London in quest of employment, and having obtained a temporary situation in London remained there, and then returned to his father's house in Exeter. He remained in Exeter three weeks, and then went back to London, and, obtaining employment there, did not return to Exeter during the rest of the qualifying period. It was held that the facts did not show a constructive residence in Exeter during the qualifying period. *Beal* v. *Exeter* (*Town Clerk of*), 20 Q. B. D. 300.

As to residence in cases of succession, by marriage, descent, &c., see section 33, *post*.

The seven miles must be measured in a straight line in a horizontal plane, and may be determined by the Ordnance survey map. See section 231, *post*. It should be mentioned that by section 77 of the Local Government Act, *ante*, p. 134, a person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London in all respects except that of residence, and is resident beyond seven miles but within fifteen miles of the county, shall be entitled to be registered as a county elector.

(*i*) *Rated.*

It is sufficient if it can be shown that a person was intended to be rated, though there may be a mistake in his name as entered in the rate. *Reg.* v. *Gregory*, 17 Jur. 439.

The 32 & 33 Vict. c. 41, s. 19, provides that the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers' column of the rate book the name of every occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise depending upon rating; and it is further provided that any occupier whose name has been omitted, shall, notwithstanding such omission, and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted. This section applies generally to every case in which the owner is rated and not the occupier, without regard to the value of the premises. See *Smith* v. *Seghill* (*Overseers of*), L. R. 10 Q. B. 422; 44 L. J. M. C. 114; 32 L. T. (N.S.) 859; 23 W. R. 745; 40 J. P. 228; *Barton* v. *Birmingham* (*Town Clerk of*), 48 L. J. C. P. 87; 39 L. T. (N.S.) 352; 43 J. P. 24. As to the claim of an occupier to be rated in other cases, see section 32, *post*.

Observe that this clause refers only to the poor rate, while the next refers to poor rates and borough rates, or, as applied to county electors, county rates.

As to rating in cases of succession by descent, marriage, &c., see section 33, *post*.

(*k*) *Payment of rates.*

The 32 & 33 Vict. c. 41, s. 7, provides that every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as therein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of every qualification or franchise which as regards rating depends upon the payment of the poor rate. It is probable, though it has not as yet been expressly decided, that this section applies to every case when the rates are paid by the owner. See *Moger* v. *Escott*, L. R. 7 C. P. 163; 41 L. J. C. P. 86; 26 L. T. (N.S.) 99; 20 W. R. 368; 36 J. P. 247; *Abel* v. *Lee*, L. R. 6 C. P. 365; 40 L. J. C. P. 154; 23 L. T. (N.S.) 844; 19 W. R. 625; *Cross* v. *Alsop*, L. R. 6 C. P. 315; 40 L. J. C. P. 53; 23 L. T. (N.S.) 589; 19 W. R. 131; 35 J. P. 153; the judgment of LUSH, J., in *Smith* v. *Seghill* (*Overseers of*), *ante*.

On the subject of the payment of rates by a person other than the owner,

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the following cases may be referred to:—The payment must be by the party's own act; it is not sufficient that another person without his authority pays them for him. *Reg.* v. *Bridgnorth*, 10 A. & E. 66. Where one building in which there were several occupiers was rated as a whole, and it was part of the agreement with the landlord that he should pay the rates, the rent being higher in consideration of such payment, the landlord and the tenants were jointly rated, and it was held that a payment by any of the persons so jointly rated would be a payment by each of them. *Wright* v. *Stockport* (*Town Clerk of*), 5 M. & G. 33: 13 L. J. C. P. 50; 7 Jur. 1112. An officer in a royal dockyard had the exclusive use of a house in the dockyard in part remuneration for his services. The rates were paid by the Paymaster-General. It was held that this was a sufficient payment by A., as he was rated and liable to pay the rates, and the payment was on his account in part remuneration for his services. *Hughes* v. *Chatham* (*Overseers of*), 5 M. & G. 54; 13 L. J. C. P. 14; 7 Jur. 1136.

The words "borough rates" will in a county mean "county rates." In a borough they mean only borough rates under the Act, not a rate under a local Act for paving and lighting the borough. *Reg.* v. *Lichfield* (*Mayor of*), 2 Q. B. 693. A. came into the occupation of the qualifying property in August. A poor rate had been made in the preceding April, and another was made in the September following. A. had paid the last-mentioned rate; but no demand had been made upon him for, nor had he paid or tendered, his proportion of the April rate, though it had not been paid by the outgoing tenant whose name appeared upon that rate. It was held that A. had paid all poor rates which had become payable from him, the liability to pay the proportion of the April rate being subject to the contingency of the outgoing tenant having made default, and of the overseers demanding his proportion from A. *Flatcher* v. *Boodle*, 18 C. B. (N.S.) 152. But an occupier is not entitled to be enrolled if the rates are payable by the owner and have not been paid, though no demand has been made on him as required by the statute. See *Clarke* v. *Buchanan*, 20 L. R. Ir. 244.

As to the payment of rates payable by instalments, see section 33, *post*.

(*l*) *Alien.*

Persons born in Hanover before the Queen's accession and not naturalised are, though resident in the United Kingdom, aliens. *Stepney Election Petition*, 17 Q. B. D. 54; 55 L. J. Q. B. 331; 54 L. T. (N.S.) 684; 34 W. R. 547.

(*m*) *Alms.*

The word "alms" applies only to such as are parochial. It does not apply to moneys distributed annually from the income of a public charitable institution established by an individual for the use and benefit of the poor housekeepers of a borough not receiving parochial relief from any parish therein. *Reg.* v. *Lichfield* (*Mayor of*), 2 Q. B. 693. Parochial relief given to a man's father is not relief to the man himself within the meaning of the above section. *Reg.* v. *Ireland*, L. R. 3 Q. B. 130; 37 L. J. Q. B. 73; 17 L. T. (N.S.) 466; 16 W. R. 358; 32 J. P. 726. But relief to a man's wife or to any of his children under 16 is relief to himself by virtue of 4 & 5 Will. 4. c. 76, s. 56. The Medical Relief Disqualification Removal Act, 1885, 48 & 49 Vict. c. 46, provides that when a person has received for himself or for any member of his family any "medical or surgical assistance or any medicine at the expense of any poor rate, such person shall not by reason thereof be deprived of any right to be registered, or to vote as a voter, at any election to certain offices, including the office of member of a local board." The term "medical and surgical assistance" is defined to mean all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the medical officer having authority to give such attendance and recommendation at the expense of any poor rate. Several cases have been decided upon the provisions of 2 Will. 4, c. 45, s. 36. The appellant having applied to the guardians for work, was employed by them, by way of relief, in breaking stones, and paid out of the parochial funds, the amount paid to him being much greater than the value of

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his work to the guardians. It was held that he had received "parochial relief or other alms" within 2 Will. 4, c. 26, so as to disqualify him from voting. *Magarrill* v. *Whitehaven (Overseers of)*, 16 Q. B. D. 242; 55 L. J. Q. B. 38; 53 L. T. (N.S.) 667; 34 W. R. 279; 40 J. P. 743. By the provisions of a charity, regulated by a scheme of the Charity Commissioners, a certain number of the poor inhabitants of a borough, who had not been for two years in receipt of parish relief, were received into an almshouse where certain weekly payments and other benefits were bestowed on them. They were liable to be removed for misconduct and other causes. It was held (following *Harrison* v. *Carter*, 2 C. P. D. 26; 46 L. J. C. P. 27; 35 L. T. (N.S.) 511; 25 W. R. 182) that they were disqualified from voting, having received alms within 2 Will. 4, c. 45, s. 36. The wife of the appellant, being near her confinement, applied to the relieving officer of the union for an order for the attendance of a medical man. The guardians authorised the relieving officer to give her an order for such attendance, but she was, in fact, attended during her confinement by an uncertificated midwife, who was sent to her and paid by the relieving officer. It was held that the relief afforded to his wife was "medical assistance" within 48 & 49 Vict. c. 46, s. 2, and that the appellant was not disqualified from being registered as a voter. *Honeybone* v. *Hambridge*, 18 Q. B. D. 418; 56 L. J. Q. B. 46; 51 J. P. 103.

The claimants during the qualifying period occupied almshouses in a borough, and received out of a charitable fund for the sustenance of the inmates allowances of 6*s.* a week. The charity was regulated by an Act of Parliament, which provided that the inmates of the almshouses were to be persons who from age, ill-health, accident, or infirmity, should be unable to maintain themselves. It was held that the facts showed a receipt of alms, which by the law of Parliament disqualified from voting under 2 & 3 Will. 4, c. 45, s. 36. *Edwards* v *Lloyd*, 20 Q. B. D. 302.

It is provided by section 33, *post*, that a person shall not be disentitled to be enrolled as a burgess by reason only (*a*) that he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority, or that his child has been admitted to and taught in any public or endowed school.

(*n*) A borough constable may not vote at a municipal election in his borough while he is a constable, or within six months after he has ceased to be such constable (19 & 20 Vict. c. 69, s. 9), and it would appear that his name may not be placed on the roll of burgesses. See *Doulon* v. *Halse*, 18 Q. B. D. 421; 56 L. J. Q. B. 41; 56 L. T. (N.S.) 340; 35 W. R. 502; 51 J. P. 183. Unless it can be said that the 19 & 20 Vict. c. 69, s. 9, is one of the "Acts affecting the same" within the meaning of section 2 of the County Electors Act, 1888, there is no prohibition against the enrolment of a county constable in a burgess roll or roll of county electors. It is submitted that county constables are not disqualified.

Persons may be "disentitled" within the meaning of the text under the Corrupt Practices Acts, 46 & 47 Vict. c. 51, ss. 6, 10; 47 & 48 Vict. c. 70, ss. 2, 7; the Felony Act, 33 & 34 Vict. c. 23, s. 2, and perhaps under some other statutes.

Council; Mayor, Aldermen, and Councillors.

10. (1) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.

Constitution of council.

(2) The council shall consist of the mayor, aldermen, and councillors.

Sect. 10. NOTE. It is provided by the Local Government Act, section 1, *ante*, p. 1, that a council shall be established in every county, and shall consist of the chairman, aldermen, and councillors. And by section 2, the council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects as the council of a borough divided into wards, subject to various modifications which are indicated throughout this volume. The county council is incorporated by section 79 of the Local Government Act, *ante*, p. 136.

Qualification of councillors

11. (1) The councillors shall be fit persons elected by the burgesses.

(2) A person shall not be qualified to be elected or to be a councillor, unless he—

(*a*) Is enrolled and entitled to be enrolled as a burgess ;(*b*) or

(*b*) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made ;(*c*) and

(*c*) In either of those cases, is seised or possessed of real or personal property, or both, to the value or amount, in the case of a borough having four or more wards,(*d*) of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value(*e*) of thirty pounds, and in the case of any other borough of fifteen pounds.

(3) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor ; which last mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.(*f*)

(4) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

(*a*) This section contains three qualifications of a councillor. These are :—
(1) Enrolment as a burgess and possession of the property qualification.
(2) Enrolment in the non-resident list and possession of the property qualification.
(3) The right to elect to the office of councillor without property qualification, but subject to this modification, that the office shall become vacant after six months' non-residence.

To these qualifications must now be added certain others provided by the Local Government Act, section 2, *ante*, p. 2.

(4) Being a peer owning property in the county. Sect. 11. NOTE.

(5) Registration as a parliamentary voter in respect of the ownership of property.

(*b*) The right of a person to be enrolled as a burgess depends upon section 9, as amended by the County Electors Act, 1888. See the notes to that section, *ante*.

The mere fact of enrolment on the burgess roll is not sufficient. The candidate must also be entitled to be enrolled. If a person is on the roll but not entitled to be enrolled, he is not qualified to be a councillor, but in that case he is not liable to penalties under section 41 (2), *post*. *See Middleton* v. *Simpson*, 5 C. P. D. 183; 49 L. J. C. P. 312; 28 W. R. 629; 44 J. P. 251.

It is sufficient to entitle a person to be nominated for the office of councillor that, if otherwise duly qualified, he is enrolled in the burgess roll at the time of the election, though his name may not be upon the burgess roll which was in force at the time of his nomination. *Budge* v. *Andrews*, 3 C. P. D. 510; 47 L. J. C. P. 586; 39 L. T. (N.S.) 166.

(*c*) The separate non-resident list is made out under section 49, *post*. In a borough, in order that a person may be entitled to be placed on that list, he must be duly qualified to be a burgess in all respects save that of residence, and he must reside within 15 miles of the borough.

A similar list is to be made for a county. It is provided by the Local Government Act, section 76, sub-section (12), *ante*, that the above section shall include, for the purposes of that Act, all persons entered in such separate list for any municipal borough by reason of occupation of property in the borough, and all persons entered in such separate list for any part of a county not in a municipal borough by reason of the occupation of property in that part.

By the County Electors Act, 1888, section 12, a list of persons occupying property in a county and residing within 15 miles, but more than seven miles from the county, shall be made out in accordance with section 49 of the Municipal Corporations Act, 1882. But by the Local Government Act, section 76, sub-section (6), it is provided that nothing in that section shall apply to any person occupying property within a borough. See the several sections and the notes to them in this work.

(*d*) In applying this section to county electors this phrase must be read, "in the case of a county having four or more electoral divisions." See the Local Government Act, section 2, *ante*, p. 2.

(*e*) This means rateable value. *Baker* v. *Marsh*, 4 E. & B. 144; 24 L. J. Q. B. 1; 1 Jur. (N.S.) 44; 3 W. R. 13; 19 J. P. 117. The poor rate in the case of county electors may, apparently, be the poor rate of any parish in the county. But the real or personal estate need not be within the county.

(*f*) The words "qualified to elect" in this proviso are not equivalent to "entitled to vote." Therefore, a person who, though not qualified to be a burgess, had been enrolled on the burgess roll and was therefore entitled to vote under section 51, *post*, was not qualified to be a councillor under this proviso. *Flintham* v. *Roxburgh*, 17 Q. B. D. 44; 55 L. J. Q. B. 472; 54 L. T. (N.S.) 797; 34 W. R. 543; 50 J. P. 311.

Note that this qualification need only exist at the time of election. The subsequent loss of the qualification to elect will not affect the right to sit and act as councillor so long as the councillor resides in the borough as required by the next sub-section.

12. (1) A person shall be disqualified for being elected and for being a councillor, if and while he— Disqualifications for being councillor.

(*a*) Is an elective auditor(*b*) or a revising assessor,(*c*) or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council;(*d*) or

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(*b*) Is in holy orders, or the regular minister of a dissenting congregation;(*e*) or

(*c*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council:(*f*)

(2) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

(*a*) Any lease, sale, or purchase of land, or any agreement for the same;(*g*) or

(*b*) Any agreement for the loan of money, or any security for the payment of money only;(*h*) or

(*c*) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(*d*) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough;(*i*) or

(*e*) Any railway company, or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Act, 1862.

(*a*) These are not the only disqualifications for being councillor. Other disqualifications arise under the Corrupt Practices Acts, 46 & 47 Vict. c. 51, ss. 6, 10; 47 & 48 Vict. c. 70, ss. 2, 7; the Felony Act, 33 & 34 Vict. c. 23, s. 2; the Bankruptcy Act, 46 & 47 Vict. c. 52, s. 32. A woman cannot be elected. See section 63, *post*, and the notes thereto. A county coroner may not be a member of the council of his county. See the Local Government Act, s. 5, *ante*, p. 13.

(*b*) See section 25, *post*.

(*c*) Revising assessors will no longer be elected. See section 29, *post*, and the County Electors Act, 1888, s. 4.

(*d*) This provision disqualifies the clerk, treasurer, and other officers of the council. But it is submitted that it does not disqualify the mayor's auditor, who must, under section 25, be a member of the council, though he may receive remuneration for his services under this Act, or under the Public Health Act, 1875, s. 246.

(*e*) This will not apply to county councillors. See the Local Government Act, s. 2, *ante*, p. 2. It will still apply to borough councillors. It has been held that a person appointed to officiate occasionally or temporarily to a dissenting congregation is not disqualified. *Reg.* v. *Oldham*, L. R. 4 Q. B. 290; 38 L. J. Q. B. 125.

(*f*) The following cases decided with reference to the Act of 1835, and to similar provisions in other Acts, may be referred to as illustrating the meaning of the text:—

A trustee of a turnpike road let his horse and cart at a certain sum to a contractor for works on a road, to be used in the performance of the works. It was held that he was liable to a penalty as being interested in a contract with the turnpike trustees. *Towsey* v. *White*, 5 B. & C. 125.

A contract entered into with a person as trustee for a councillor is within the provision in the text. *Simpson* v. *Ready*, 12 M. & W. 736; 13 L. J. Ex. 193.

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The text applies to a contract with the council under which a councillor has been employed and has acted, though the contract is one which should be sealed, and it is not sealed. Where such a contract arises, the disqualification arises *de die in diem*. *Reg.* v. *Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304; 16 Jur. 1046.

An alderman of a borough sold some iron to a party who had contracted to supply the corporation with iron railings, and who purchased the iron for the purpose of performing his contract. It was held that the alderman had not an interest in a contract with the council. *Le Feuvre* v. *Lankester*, 3 E. & B. 530; 23 L. J. Q. B. 254; 18 Jur. 894; 18 J. P. 198; but see *Tomkins* v. *Jolliffe*, *infra*.

A single bargain—as if the council bought a brush in a shop—would not disqualify the seller, though the price had not been paid. Per ALDERSON and BRAMWELL, BB., in *Woolley* v. *Kay*, 1 H. R. 307; 25 L. J. Ex. 351; 20 J. P. 776; but see *Lewis* v. *Carr*, *infra*.

An invoice addressed to town commissioners for several separate quantities of lime supplied at different times during four months was held to be sufficient evidence of interest in a contract with the commissioners. *Nicholson* v. *Field*, 7 H. & N. 810; 31 L. J. Ex. 233; 10 W. R. 304.

A person who had entered into a contract with the Corporation of Dublin was held disqualified to be elected a member of that corporation, though he had before the election, but without the privity of the corporation, assigned his contract to a third person. *Reg.* v. *Franklin*, 6 Ir. Rep. C. L. 239.

The disqualification applies only during the continuance of the contract, so that a councillor does not by becoming interested in a contract cease to be qualified or become disqualified within the meaning of section 41, so as to incur penalties for acting after the termination of the contract. *Lewis* v. *Carr*, 1 Ex. D. 484; 46 L. J. Ex. 314; 36 L. T. (N.S.) 44; 24 W. R. 940.

Where a member of a local board received payments from the board for work done for the surveyor of the board, the work consisting of the use of men and horses at intervals during two years, it was held that he was interested in a contract with the board. *Fletcher* v. *Hudson*, 7 Q. B. D. 611; 51 L. J. Q. B. 48; 46 L. T. (N.S.) 125; 30 W. R. 349; 46 J. P. 372.

The brother of the defendant entered into a contract with a metropolitan vestry, and in order to enable him to carry it out borrowed money of the defendant, who by way of security took an assignment of the contract. Afterwards the defendant was elected a member of the vestry. It was held that he was interested in a contract with the vestry. *Hunnings* v. *Williamson*, 11 Q. B. D. 533; 52 L. J. Q. B. 416; 49 L. T. (N.S.) 361; 32 W. R. 267; 48 J. P. 132.

A contract between a corporation and a member is probably void. *Mellis* v. *Shirley Local Board*, 16 Q. B. D. 446; 55 C. J. Q. B. 143; 53 L. T. (N.S.) 810; 34 W. R. 187; 50 J. P. 214.

C. contracted with a local board to make certain alterations to gas fittings in a town hall. C. employed the defendant, who was a member of the board and a builder, to erect scaffolding for the purpose of enabling him to effect the alterations. It was held by FIELD, J., that the defendant was interested in a contract with the board. *Tomkins* v. *Jolliffe*, 51 J. P. 247.

By the terms of contracts entered into with a local authority, the surveyor was to receive from the contractors in respect of bills of quantities to be prepared by him, percentages on the amounts he should certify to be due to such contractors by the local authority; it was held that the surveyor was interested or concerned in the contracts. And where he was employed, apart from his ordinary duties, to superintend the construction of certain drainage works as engineer of the local authority, who were to remunerate him by a percentage on the outlay, it was held that he was interested in the contract for the work. *Whiteley* v. *Barley*, 21 Q. B. D. 155.

(*g*) Under the Public Health Act, 1875, it has been held that a member of a local board is not disqualified by the lease to him of a sewage farm containing covenants on the part of the board to supply, and on his part to use, the sewage of the district. *Reg.* v. *Gaskarth*, 5 Q. B. D. 321; 49 L. J. Q. B. 409; 42 L. T. (N.S.) 688; 28 W. R. 596; 44 J. P. 507.

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The text would probably cover such cases as the letting of rooms or offices to the council. See *Burgess* v. *Clark*, 14 Q. B. D. 735; 33 W. R. 269; 49 J. P. 388.

(*h*) L. contracted with certain commissioners to supply a town with water. This contract not having been fully carried out, he gave it up by deed to the commissioners, they agreeing to pay him a certain balance if they abandoned the works or completed them, and obtained a specific quantity of water. The deed contained releases by L., and covenants by L., not to molest the commissioners, &c. The works remained incomplete, but not abandoned. It was held that the deed was only a security for a sum of money. *Le Feuvre* v. *Lankester*, *supra*.

(*i*) But for this provision a councillor could not have held shares in a gas or water company contracting with the council. See *Todd* v. *Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47; 52 L. T. (N.S.) 120; 49 J. P. 278.

Term of office and rotation of councillors

13. (1) The term of office of a councillor shall be three years.

(2) On the ordinary day of election of councillors in every year one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3) The third to go out shall be the councillors who have been longest in office without re-election.

It is provided by the Local Government Act, s. 2, *ante*, p. 2, that county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election. The above section does not, therefore, apply to county councillors.

Number, term of office, and rotation of aldermen.

14. (1) The aldermen shall be fit persons elected by the council.(*a*)

(2) The number of aldermen shall be one third of the number of councillors.(*aa*)

(3) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5) The term of office of an alderman shall be six years.

(6) On the ordinary day of election of aldermen in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election.(*b*)

(7) The half to go out shall be those who have been aldermen for the longest time without re-election.

(*a*) In a county council the aldermen are to be called county aldermen.

(*aa*) In London the number is to be one sixth. See the Local Government Act, s. 40 (5), *ante*, p. 73.

(*b*) As to the election of aldermen, see section 60, *post*. As to the election of an alderman to fill a casual vacancy, see section 40, *post*. The ordinary day

of election of aldermen in a borough is the 9th November; but in a county it is the 7th November. See the Local Government Act, s. 75, sub-sect. 13, *ante*, p. 124. As to the first election of county aldermen, see the Local Government Act, section 105, *ante*, p. 164. Sect. 14. Note.

It would appear that an alderman may be elected a councillor. See *Reg.* v. *Bangor* (*Mayor of*), 18 Q. B. D. 349.

15. (1) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such. Qualification, term of office, salary, procedure, and powers of mayor.

(2) An outgoing alderman is eligible.

(3) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

(4) He may receive such remuneration as the council think reasonable.

(5) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough.

(6) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

In a county council there will be a chairman instead of a mayor. He may be elected from within or without the council. His term of office is to be one year, and apparently the text will enable and require him to remain in office until his successor has made the declaration. (See Sched. 8, *post.*) He will be a justice by virtue of his office. See the Local Government Act, section 2, *ante*, p. 4. As to the first election of chairman of a county council, see the Local Government Act, section 105, *ante*, p. 164.

Sub-section (5) is not to apply to the chairman of a county council. See the Local Government Act, section 75 (16), *ante*, p. 124.

Sub-section (6) of the above section has no application to the chairman of a county council.

As to the remuneration of the mayor or the chairman of a county council, see *Attorney-General* v. *Blackburn* (*Corporation of*), 57 L. T. (N.S.) 385. In that case a corporation voted a sum of money to the mayor by way of remuneration, at the same time resolving that the mayor should be requested to take such steps as he might deem proper for the due celebration of Her Majesty's Jubilee. Some of the burgesses moved to restrain the corporation from applying any part of the borough fund for this purpose, but it was held that the provisions of the Act had not been contravened, and an interlocutory injunction was refused.

16. (1) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor. Power of mayor to appoint deputy.

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(2) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice, or in any judicial capacity.

This section does not apply to county councils having regard to the Local Government Act, section 75, sub-section (16). Section 2 of that Act, *ante*, p. 4, enables the council to appoint a vice-chairman. See also section 88 of that Act as to the deputy chairman in London.

Officers of Council.

The town clerk and deputy.

17. (1) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough.

(2) The town clerk shall hold office during the pleasure of the council.

(3) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure.

(6) All things required or authorised by law to be done by or to the town clerk may be done by or to the deputy town clerk.

The officer of a county council corresponding to the town clerk is the clerk of the council, who in all counties, except London, will also be the clerk of the peace. The appointment of the clerk of the council and the deputy clerk, and their duties, are regulated by the Local Government Act, section 83, *ante*, p. 140.

By the Local Government Act, section 75, *ante*, p. 124, it is provided that nothing in the above section shall apply to the county council.

The treasurer.

18. (1) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough.

(2) The treasurer shall hold office during the pleasure of the council.

(3) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4) The offices of town clerk and treasurer shall not be held by the same person.

The Local Government Act, section 75, *ante*, p. 125, provides that this section shall not apply to the county treasurer, but if the county council so resolve, the above section is to supersede the existing enactments with respect to the county treasurer. Sect. 18. NOTE.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed. Other borough officers.

In applying this section to a county council, the provisions of the Local Government Act, ss. 118, 119, *ante*, p. 178, as to existing officers and compensation, must be borne in mind. By section 120, if the county council abolish the office of any existing officer, they must pay him compensation.

20. The council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable. Security by and remuneration of officers.

It is provided by the Local Government Act, section 118, *ante*, p. 178, that existing officers, *i.e.*, officers transferred to the county councils under that Act, shall hold their offices by the same tenure, and upon the same terms and conditions, as if that Act had not passed. The above section, in so far as it applies to security, will not apply to an existing officer who has not hitherto given security. But upon new appointments to any offices security must be taken, the amount and nature of the security being in the discretion of the county council.

21. (1) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connection with his office, showing the amount due from each. Accountability of officers.

(2) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3) If any such officer—

(*a*) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(*b*) After three days' notice in writing, signed by the town clerk or by three members of the council, given or left at his

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usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council, or as they direct;

a court of summary jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

This section will apply to officers of the county council.

The phrase "court of summary jurisdiction" is not defined by the Act, but by the Summary Jurisdiction Act, 1879, s. 51 (3), it is provided that, in any future Act, a "court of summary jurisdiction" shall mean justices acting under the Summary Jurisdiction Acts, and those Acts shall apply accordingly.

Meetings and Proceedings of Council; Committees.

Quarterly and other meetings of council, appointment of committees, minutes, &c.

22. (1) The rules in the Second Schedule shall be observed.(*a*)

(2) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees;(*b*) but the acts of every such committee shall be submitted to the council for their approval.(*c*)

(3) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest.(*d*)

(4) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body.

(5) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.(*e*)

(6) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute

has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes. Sect. 22. Sub-s. 6.

(*a*) See this schedule, *post*.

(*b*) This provision will apply to county councils. As to the appointment of joint committees by county councils or quarter sessions, see the Local Government Act, section 81, *ante*, p. 138, and as to the proceedings of such committee, see section 82. As to the standing joint committee, see section 30, *ante*, p. 50.

As to the first and other meetings of the county provisional councils, see the Local Government Act, section 105, *ante*, p. 164.

By the Local Government Act, section 28, *ante*, p. 49, the county council shall have power to delegate, with or without any restrictions or conditions, as they may think fit, any powers or duties transferred to them by that Act, to any committee, except the power of raising money, by rate or loan.

(*c*) The acts and proceedings of the standing joint committee need not be submitted to the county council for their approval. (Local Government Act, section 75, *ante*, p. 125.) Every committee of a county council is required to report its proceedings to the council, but to the extent to which the council so direct the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval. (Local Government Act, s. 82, *ante*, p. 140.)

(*d*) It has already been pointed out that a member of the council is disqualified by any interest in a contract with the council. (See section 12, *ante*, p. 205.) But there are certain excepted interests which do not disqualify, and the provisions in the text will apply to these.

(*e*) As to the taking and signing of the minutes, see Schedule 2, r. 12, *post*.

Bye-laws.(*a*)

Power of council to make bye-laws.

23. (1) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances(*b*) not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2) Such a bye-law shall not be made unless at least two-thirds of the whole number of the council are present.

(3) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

(4) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty

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days the Queen, with the advice of Her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time.

(5) Any offence against such a bye-law may be prosecuted summarily.(*c*)

(6) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.(*d*)

(*a*) The Local Government Act, section 16, provides that a county council shall have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making bye-laws in relation to their borough. See the section and the notes thereto, *ante*, p. 30.

By section 85 of the Local Government Act the provisions of sub-section (1) of this section in so far as it gives power to a council (whether town council or county council) to make bye-laws regulating the use of bicycles and tricycles, are repealed. See this section, *ante*, p. 144.

(*b*) It will be observed that the bye-laws are of two kinds, one for the good rule and government of the borough, and one for the suppression of nuisances. The distinction is important, for, as will be seen hereafter, the two kinds are differently confirmed, at least in a borough.

A bye-law made under this section provided that "every person who shall sound, or play upon any musical instrument, or sing or make any noise in any street, or near any house after having been required by any householder resident in such street or by any police constable to desist, either on account of any illness of any inmate of such house or for any reasonable cause. G., a captain in the Salvation Army, was convicted under this bye-law for playing a concertina on a Sunday morning, surrounded by a large crowd, after a police constable had required him to desist, telling him at the same time that he had reasonable cause for so doing, as several complaints had been made by the inhabitants. It was held that the bye-law was reasonable, and that it was for the justices to decide whether there was reasonable cause. *Reg* v. *Powell*, 51 L. T. (N.S.) 92; 48 J. P. 740.

A bye-law provided that no person, not being a member of Her Majesty's army or auxiliary forces, acting under the orders of his commanding officer, shall sound or play upon any musical instrument in any of the streets of the borough on Sunday. It was held that such bye-law was unreasonable and *ultra vires* and therefore void. *Johnson* v. *Croydon* (*Mayor of*), 16 Q. B. D. 708; 55 L. J. M. C. 117; 54 L. T. (N.S.) 295; 50 J. P. 487.

A bye-law that parents should be liable to a penalty if they suffered a child to sell articles in the street after a certain hour was held to be *ultra vires*. *Macdonald* v. *Lochrane*, 51 J. P. 629.

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A bye-law made by a town council provided that every person who in any street should sound or play upon any musical or noisy instrument, or should sing, recite, or preach in any street without having previously obtained a license in writing from the mayor; and every person who having obtained such license should fail to observe, or should act contrary to any of the conditions of such license, should forfeit a sum not exceeding 20*s*. It was held that this bye-law was unreasonable and *ultra vires* and therefore void. *Munro* v. *Watson*, 57 L. T. (N.S.) 366; 51 J. P. 660.

A bye-law which forbade the keeping of swine within a borough was held bad. *Everett* v. *Grapes*, 3 L. T. (N.S.) 669; 25 J. P. 644.

A bye-law that no person should erect any booth for the purpose of any show or public entertainment in any place within a borough without license from the mayor, which license should only be given during the annual fair times, if any three inhabitants objected, was held void. *Elwood* v. *Bullock*, 6 Q. B. 383; 13 L. J. Q. B. 330; 8 Jur. 1044.

The following bye-law was held valid: "If any butcher or dealer in meat, or any fishmonger, poulterer, or other person, shall expose or offer for sale on his premises, or have in his possession with intent to sell or to expose for sale, any meat, fish, poultry, or other victuals or provisions unfit for the food of man, he shall be subject to a penalty, to be recovered before two justices, who shall decide on the unfitness." *Shillito* v. *Thompson*, 1 Q. B. D. 12; 45 L. J. Q. B. 18; 33 L. T. (N.S.) 506; 24 W. R. 57.

A bye-law may be good in part. *R.* v. *Faversham*, 8 T. R. 352; *Reg.* v. *Lundie*, 31 L. J. M. C. 157; 8 Jur. (N.S.) 640; 5 L. T. (N.S.) 830; 10 W. R. 267.

A bye-law in restraint of trade is bad. *Hesketh* v. *Braddock*, 3 Burr. 1847; *Bodwick* v. *Fennell*, 1 Wils. 233; *Clark* v. *Le Cren*, 9 B. & C. 52; *Shaw* v. *Poynter*, 2 A. & E. 312. But a mere regulation, not in restraint of trade, as that no person should slaughter animals within a city, is valid. *Pierce* v. *Bartrum*, Cowp. 269.

(*c*) That is, in manner provided by the Summary Jurisdiction Acts. See section 219, *post*.

(*d*) Section 187 of the Public Health Act, 1875, is as follows:—

"Bye-laws made by the council of any borough under the provisions of section 90 of the Act of the 6th year of King Will. the 4th, c. 76, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act." The meaning of this provision, read with the text, is that while in a borough the bye-laws relating to the good government of the borough are confirmed by a Secretary of State, and may be disallowed by the Queen in Council as provided by sub-section (4), *supra*, bye-laws for the prevention and suppression of the nuisances mentioned in sub-section (1) must be made in manner provided by the Public Health Act, 1875, and must be confirmed by the Local Government Board under section 184 of that Act. The Local Government Act, section 16, *ante*, p. 30, which enables a county council to make bye-laws under the above section, provides that section 187 of the Public Health Act, 1875, shall apply to such bye-laws. Consequently, any bye-laws made by a county council for the suppression and prevention of nuisances within the county must be made and confirmed in manner provided by the Public Health Act. It is not quite clear, however, whether bye-laws for the good government of the county are to be made and confirmed in this manner, for section 187 of the Public Health Act applies only to the other class of bye-laws.

Evidence of bye-laws.

24. The production of a written copy of a bye-law made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the cor-

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porate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the bye-law.

This section will not apply to county bye-laws, for section 186 of the Public Health Act applies to such bye-laws; see *ante*, p. 31. Such bye-laws must be authenticated by the seal of the county council.

The word "written" includes "printed." See section 7 of this Act and section 99 of the Local Government Act, *ante*, p. 155.

Accounts and Audit.

The borough auditors.

25. (1) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.(*a*)

(2) An elective auditor must be qualified to be a councillor, but may not be a member of the council or the town clerk or the treasurer.

(3) The mayor's auditor must be a member of the council.

(4) The term of office of each auditor shall be one year.

(5) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors.(*b*)

(6) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy.(*c*)

(*a*) The above section will have no application to a county council, for by the Local Government Act, section 71, *ante*, p. 115, the accounts of county councils are to be audited by the district auditors appointed by the Local Government Board. But in county boroughs the above section will still apply, for by the Local Government Act, section 34, *ante*, p. 60, Part IV. of that Act relating to finance is not to apply to county boroughs.

There is no provision in the Municipal Corporations Act, 1882, relating to the remuneration of the borough auditors. But by the Public Health Act, 1885, section 246, the borough auditors may be paid at a rate not exceeding three guineas a day for auditing the accounts of the borough as urban sanitary authority.

(*b*) The ordinary day for the election of borough auditors is the 1st March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint. See section 62, *post*.

(*c*) As to the filling of casual vacancies, see sections 40 and 66, *post*.

Half-yearly accounts of treasurer.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

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The Local Government Act, section 71, *ante*, p. 115, provides that the provisions of the Municipal Corporations Act, 1882, with respect to the accounts of the treasurer of a borough shall apply to the accounts of a county council.

The same section provides that the accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by that Act, and shall be in the form for the time being prescribed by the Local Government Board. The local financial year is defined by section 73, *ante*, p. 119. It will be observed that the accounts of county councils are to be made out yearly, not half-yearly.

The above section will, however, continue to apply to county boroughs without alteration.

By section 233, *post*, the treasurer's accounts may be inspected by any member of the council.

Audit and publication of treasurer's accounts.

27. (1) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year.

This section will apply to county boroughs without alteration. With regard to other county councils, the accounts are to be made out to the end of each financial year, and are to be audited by the district auditors. Save to this extent the section will apply to county councils, for by the Local Government Act, section 71, *ante*, p. 115, the provisions of the Municipal Corporations Act, with respect to the accounts of the treasurer of a borough and the abstract thereof, are to apply to the accounts of the county council.

By section 233, *post*, all the ratepayers are entitled to inspect the abstract and to obtain a copy on payment of a reasonable sum.

Returns to Local Government Board.

28. (1) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

(2) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds, to be recovered by action on behalf of the Crown in the High Court.

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(6) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

This section will apply to county boroughs without alteration save, perhaps, that the financial year will end on the 31st March, after the appointed day. See the Local Government Act, section 73, *ante*, p. 119.

The section will also apply to other county councils with certain modifications. See section 83 of the Local Government Act, *ante*, p. 140. The clerk of the council must perform the duties of the town clerk. After the appointed day the financial year will end on the 31st, not the 25th March.

Revising Assessors.

Revising assessors in non-parliamentary boroughs.

29. (1) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses.

(2) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

(3) The term of office of each revising assessor shall be one year.

(4) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

(5) The appointment shall be signified to the council in writing, signed by the assessor, and be recorded in their minutes.

This section is wholly repealed. The function of the revising assessors was to assist the mayor in revising the burgess lists in boroughs to which the 41 & 42 Vict. c. 26, did not apply. But by the County Electors Act, 1888, 51 Vict. c. 10, the 41 & 42 Vict. c. 26, is now applied to every municipal borough, and by section 4 it is provided that revising assessors for such borough shall not be elected.

Division of Borough into Wards, or alteration of Wards.

Proceedings for division of borough into wards, or alteration of wards.

30. (1) If two-thirds of the council of a borough agree to petition and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards.

(2) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the *London Gazette* one month at least before the petition is so considered.

(3) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(8) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12) The scheme shall be published in the *London Gazette*, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

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(13) If Her Majesty in Council does not approve the scheme, as originally prepared by the commissioner, it shall nevertheless be published in the *London Gazette*, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitively approves a scheme in that behalf.

(14) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.

It is provided by the Local Government Act, section 2, *ante*, p. 1, that the divisions of the county for the purpose of the election of county councillors shall be called electoral divisions, and not wards, and one county councillor only shall be elected for each electoral division. The same section further provides that as respects the number of the county councillors, and the boundaries of the electoral divisions in every county—

(*a*) The number of the county councillors, and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county, shall be such as the Local Government Board may determine; and

(*b*) Any borough returning one councillor only shall be an electoral division; and

(*c*) In the rest of the county the electoral divisions shall be such as in the case of a borough returning more than one councillor the council of the borough, and in the rest of the county the quarter sessions for the county, may determine;

subject in either case to the directions enacted by that Act; and in the case of elections after the first, to any alterations made, in accordance with the said directions, in manner in this Act mentioned.

The directions here referred to are contained in section 51, *ante*, p. 89, and future alterations of electoral divisions are to be effected in manner provided by section 54, *ante*, p. 92.

It appears, therefore, that the above section will not apply to electoral divisions. It will, of course, continue to apply to the division of boroughs into wards.

Supplemental and Exceptional Provisions.

Occupation of part of house.

31. In and for the purposes of this Act—

(*a*) The terms house, warehouse, counting-house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

(*b*) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part. Sect. 31.

See section 9, *ante*, and the notes thereto.

It is provided by the County Electors Act, 1888, 51 Vict. c. 10, s. 2, subsect. (2), that the above section shall extend to so much of every county as is not comprised within the limits of any municipal borough, for the purpose of the qualification of county electors.

But for the provision in the text, the tenant of offices or chambers might be in law only a lodger, and not an occupier within the meaning of section 9. See note (*d*) to section 9, *ante*, p. 197.

Claim by occupier to be rated.

32. (1) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

(2) If they fail to do so, he shall nevertheless, for the purposes of this Act, be deemed rated to that rate.

The 32 & 33 Vict. c. 41, s. 19, provides that the overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers' column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for every qualification or franchise as aforesaid; and if any overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on summary conviction to a penalty not exceeding 2*l.*: provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating in the same manner as if his name had not been so omitted. This provision applies only in cases where the owner pays the rate, but in such cases it is of wider application than the text in that no claim to be rated is necessary. The text provides for all other cases of omission to be rated.

Rules as to qualification of burgess on succession, &c.

33.(*a*) (1) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succes-

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sion, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.(*b*)

(3) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4) A person shall not be disentitled to be enrolled as a burgess by reason only—

(*a*) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority: or

(*b*) That his child has been admitted to and taught in any public or endowed school.(*c*)

(*a*) The County Electors Act, 1888, s. 2, applies this section to county electors.

(*b*) But the property must be in the same county and outside the limits of a borough in order to qualify a county elector, just as in order to qualify a burgess it must be within the borough. See section 2 of the County Electors Act.

(*c*) This forms an exception to section 9, sub-section (3), which disqualifies a person to be enrolled as a burgess if he has within the qualifying period received parochial relief or other alms. See the notes to that section.

It is provided by the Elementary Education Act, 1876, s. 10, that the parent of a child whose fees are paid under that section shall not be deprived of any franchise, right, or privilege, and shall not be subject to any disability or disqualification.

Obligation to accept office or pay fine.

34. (1) Every qualified(*a*) person elected to a corporate office,(*b*) unless exempt under this section or otherwise by law,(*c*) either shall accept the office by making and subscribing the declaration required by this Act,(*d*) within five days after notice of election,(*e*) or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by bye-law determine.

(2) If there is no bye-law determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

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(3) The persons exempt under this section are—

(*a*) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(*b*) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.(*f*)

(4) A fine payable under this section shall be recoverable summarily.(*g*)

(*a*) In proceedings under this section there need not be express or actual evidence, but there must be some evidence of qualification, and if in fact the party was not qualified he is not liable to the penalty, and a conviction is invalid. *Reg.* v. *Stockton JJ.*, 11 W. R. 65; 26 J. P. 771.

(*b*) In a borough the term "corporate office" includes the office of mayor, alderman, councillor, and elective auditor. In a county it will include the chairman, county aldermen, and councillors.

(*c*) There are exemptions under many statutes from the liability to serve in a corporate office. Thus, officers of customs are exempt under 39 & 40 Vict. c. 36, s. 9; persons registered as dentists under 41 & 42 Vict. c. 33, s. 30; commissioners and officers of excise under 7 & 8 Geo. 4, c. 53, s. 11; inspectors of factories under 41 & 42 Vict. c. 16, s. 67; officers of inland revenue under 16 & 17 Vict. c. 59, s. 17; registered medical practitioners under 21 & 22 Vict. c. 90, s. 35; officers of the post office under 7 Will. 4 & 1 Vict. c. 33, s. 12; registrars of births under 7 Will. 4 & 1 Vict. c. 22, s. 18; men belonging to the army reserve under 45 & 46 Vict. c. 48, s. 7; officers in the army under 44 & 45 Vict. c. 58, s. 146 (and see section 253, *post*); resident members of the universities, see section 257, *post*. To these must be added persons disqualified under the Corrupt Practices Acts, the Bankruptcy Act, the Felony Act, &c., as to which see section 12, note (*a*), *ante*, p. 206.

(*d*) The declaration is set out in Schedule 8. As to persons not accepting office by reason of refusal on conscientious grounds to make the declaration, see section 36, *post*.

(*e*) In the case of a county councillor this period is extended to ten days. See the Local Government Act, section 75, *ante*, p. 124.

(*f*) A further ground of exemption is that the person elected was nominated without his consent. See the Local Government Act, section 75, *ante*, p. 125.

(*g*) That is to say, before a court of summary jurisdiction consisting of two or more justices sitting in open court. See the Summary Jurisdiction Act, 1879, ss. 20, 51.

Declaration on acceptance of office.

35. A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

It has been held that a councillor before whom this declaration is taken cannot be the relator in proceedings by way of *quo warranto* to avoid the office on the ground of disqualification. *Reg.* v. *Greene*, 2 Q. B. 460. The ground of this decision was that as a councillor need not act unless he chooses in

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taking the declaration, by acting he must be taken to concur in the irregularity. *Quære*, if this would prevent his presenting an election petition under section 87, *post*.

In applying this section to county councillors, the clerk of the council must be substituted for the town clerk.

Final resignation, &c.

36. (1) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof.(*a*)

(2) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.(*b*)

(3) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.(*c*)

(*a*) But a person who has become disqualified, *e.g.*, by compounding with his creditors, under section 39, cannot resign. *Hardwick* v. *Brown*, L. R. 8 C. P. 406; 28 L. T. (N.S.) 502; 21 W. R. 639; 37 J. P. 407.

If a person who is an alderman is elected a councillor he vacates his office of alderman, but *quære*, whether he is liable to a fine under this section. See *Reg.* v. *Bangor (Mayor, &c., of)*, 18 Q. B. D. pp. 362, 366.

If a man elected and admitted to an office discovers that for want of qualification or for any other sufficient reason he is not entitled to hold the office, and resigns it, a proceeding by *quo warranto* would not be necessary in order to vacate his office and so make way for a fresh election. But when the relator not only denies the validity of the election but claims to be elected himself, he is entitled to the judgment of the court accordingly. *Reg.* v. *Blizard*, L. R. 2 Q. B. 55; 36 L. J. Q. B. 18; 15 L. T. (N.S.) 242; 15 W. R. 105; 31 J. P. 200. This principle would be equally applicable to proceedings by way of election petition under section 87, *post*.

As to the fine, see section 34, *ante*, p. 222. The resignation is completed by the delivery of the writing and payment of the fine, and cannot afterwards be withdrawn. *Reg* v. *Wigan (Mayor of)*, 14 Q. B. D. 908; 49 J. P. 372.

(*b*) In a county the notice must be countersigned by the clerk of the council. As to the affixing of the notice, see section 232, *post*. It would appear from that section that the notice may be posted in a conspicuous place in the electoral division to which the notice relates.

(*c*) No oath is required to be taken as a condition of holding a municipal office. See 31 & 32 Vict. c. 72.

Re-eligibility of office holders.

37. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible.

Mayor and aldermen

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding

anything in this Act as to councillors going out of office at the end of three years. Sect. 38. to continue members of council.

In applying this section to county councils the chairman must be substituted for the mayor. By the Local Government Act, section 2, the term of office of the chairman is one year.

Avoidance of office by bankruptcy or absence.

39. (1) If the mayor, or an alderman or councillor—

(*a*) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise;(*a*) or

(*b*) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months:(*b*)

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.(*c*)

(3) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge.(*d*)

(4) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.(*e*)

(*a*) Where an alderman made a composition with his creditors, but not by deed, it was held that as the proceedings were not under the Bankruptcy Act, he was not disqualified, and the court granted an injunction restraining the council from holding a meeting declaring the office void. *Aslatt* v. *Southampton* (*Corporation of*), 16 Ch. D. 243; 50 L. J. Ch. 31; 43 L. T. (N.S.) 464.

An assignment of a man's entire property for the benefit of his creditors is not a composition. *Reg.* v. *Cuoban*, 18 Q. B. D. 56; L. J. M. C. 33; 51 J. P. 500.

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(*b*) In the case of county councillors this period is extended to twelve months. See the Local Government Act, section 75, *ante*, p. 124. The same section provides that nothing in this section shall disqualify the chairman or vice-chairman of a county council by reason of absence.

(*c*) Until this notice has been given the office is not vacant. See *Reg.* v. *Leeds* (*Mayor, &c, of*), 7 A. & E. 963; *Hardwick* v. *Brown*, *ante*, p. 224; *Reg.* v. *Welshpool* (*Mayor, &c., of*), 35 L. T. (N.S.) 598.

As to the publication of the notice, see section 232, *post*. It would probably be sufficient to post it in a conspicuous place in the electoral division for which a county councillor was elected.

(*d*) The provisions of the text as to bankruptcy are to some extent superseded by the Bankruptcy Act, 1883, 46 & 47 Vict. c. 52. By section 32 of that Act, where a debtor is adjudged a bankrupt, he shall be disqualified for being elected to, or holding or exercising, the office of mayor, alderman, or councillor; and this disqualification is to be removed and cease if and when (*a*) the adjudication in bankruptcy is annulled, or (*b*) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part. The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal. As to the period when the disqualification ceases, see *Futcher* v. *Saunders*, 49 J. P. 424.

(*e*) As to the fine for non-acceptance of office, see section 34, *ante*, p. 224.

Filling of casual vacancies.

40. (1) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.(*a*)

(2) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.(*b*)

(3) Non-acceptance of office by a person elected creates a casual vacancy.

(*a*) As to the returning officer in elections of county councillors, see the Local Government Act, section 75, *ante*, p. 121. As to the returning officer in the metropolis, see section 103, *ante*, p. 164. As to the returning officer for first elections and the filling of casual vacancies at first elections, see sections 107, *ante*, p. 167.

As to the time within which casual elections should be filled, see section 66, *post*.

(*b*) It is necessary to distinguish the ordinary from the extraordinary vacancies where these are filled up at the ordinary annual election, otherwise the election may be avoided. *Reg.* v. *Rowley*, 6 Q. B. 668; 14 L. J. Q. B.

62; 8 Jur. 1170; *Reg.* v. *Rippon*, 1 Q. B. D. 217; 45 L. J. Q. B. 188; 34 L. T. (N.S.) 444; 24 W. R. 633; 40 J. P. 536. The provision in the text only applies where two or more casual vacancies are filled at the same time. These cases cannot, however, apply to county councillors, all of whom go out of office at the same time. Sect. 40. NOTE.

41. (1) If any person acts in a corporate office without having made the declaration by this Act required,(*a*) or without being qualified at the time of making the declaration, or after ceasing to be qualified,(*b*) or after becoming disqualified,(*c*) he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.(*d*) Penalty on unqualified person acting in office.

(2) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein.(*e*)

(*a*) See section 35, *ante*, p. 223.
(*b*) See section 9 and the notes to that section, *ante*, p. 195.
(*c*) As to the disqualification of a councillor, see sections 12, 39, *ante*, and the notes to these sections.
(*d*) This action must be brought in a borough by a burgess (see section 224, *post*), in a county by a county elector.
(*e*) But for this provision a person whose name was on the burgess roll might be liable to a penalty under this section if he were not qualified. But this provision will not in any way prevent the removal of a disqualified person by *quo warranto* or election petition. See *Flintham* v. *Roxburgh*, *ante*, p. 205.

42. (1) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.(*a*) Validity of acts done notwithstanding disqualification, &c.

(2) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

(*a*) See section 102, *post*.

43. If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or Duties of town

Sect. 43. clerk, deputy, and treasurer, during vacancy or incapacity.

treasurer (as the case may be) is incapable of acting, all acts by law authorised or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

It it presumed that this section would enable the chairman of a county council to make an appointment in the cases mentioned in the section.

PART III.

Preparations for and Procedure at Elections.

Parish Burgess Lists; Burgess Rolls; Ward Rolls.

Preparation and revision of parish burgess list.

44. (1) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878.

(2) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule.

(3) In either case the lists shall be styled the parish burgess lists.

It is provided by the County Electors Act, 1888, section 4, that in all boroughs the lists of burgesses shall hereafter be revised by the revising barrister in manner provided by the 41 & 42 Vict. c. 26, and that revising assessors shall no longer be appointed. Sub-section (2) of the above section is therefore practically repealed. The same section also provides that the list of county electors in parishes outside boroughs shall be made out and revised in like manner as burgess lists in boroughs, with certain qualifications which need not here be stated, and for which the reader is referred to Mr. Lushington's work on the County Electors Act, 1888.

The burgess roll and ward rolls.

45.(*a*) (1) When the parish burgess lists have been revised and signed, the revising authority(*b*) shall deliver them to the town clerk, and a printed copy thereof,(*c*) examined by him and signed by him, shall be the burgess roll of the borough.

(2) The burgess roll shall be completed on or before the twentieth of October(*d*) in each year, and shall come into operation

on the first of November in that year, and shall continue in operation for the twelve months beginning on that day.

(3) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts.(*e*)

(4) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.(*f*)

(6) A burgess shall not be enrolled in more than one ward roll.(*g*)

(7) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878, it shall have the same effect as the original, and may be delivered instead thereof.(*h*)

(8) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9) No stamp duty shall be payable in respect of the enrolment of a burgess.

(*a*) It is provided by the County Electors Act, 1888, section 7, that the clerk of the peace of every county shall make up a register of all persons registered as burgesses or county electors in the county, both for the county and for each electoral division into which the county is divided for the purpose of election of the county authority, and such number of copies as the clerk of the peace may require of the list of burgesses as revised shall be delivered by the town clerk to such clerk of the peace for the purpose of making up such register. Consequently in all boroughs the revised list of burgesses will be delivered to the town clerk as provided by the above section, and it will be his duty to print and sign the burgess roll, and to send copies of it to the clerk of the peace to enable the latter to make up the roll of county electors. Section 7 of the County Electors Act contains a further provision applying the above section to the roll of county electors. It provides that "the Registration of Electors Acts, and sections 45, 48 and 71, of the Municipal Corporations Act, 1882, shall apply for the purposes of this section, with the substitution of clerk of the peace for town clerk, and of county register and division register for burgess roll and ward roll respectively, and of electoral division for ward, and of county fund for borough fund."

(*b*) The revising authority will now be in every case the revising barrister.

(*c*) The town clerk of a borough must print the burgess list (section 48, *post*). The clerk of the peace must print the list of county electors in places not in boroughs. See note (*a*) *supra*.

(*d*) This date must be observed in this year (1888) with reference to the revision of the burgess roll. The revision of lists of county electors in parishes

Sect. 45. Note.

not in boroughs may during the year be as late as the 31st October, and the register of county electors may be completed at any time before the 31st December. See the County Electors Act, 1888, section 15.

(*e*) The County Electors Act, 1888, section 4, amended by the Local Government Act, section 76, *ante*, p. 131, provides as follows: "(2) In the construction of the Registration of Electors Acts for the purpose of their application to a parish *not situate within a municipal borough*, there shall be made the variations following, and such other variations as may be necessary for carrying into effect the application, that is to say :—(*c*) Section 21 of the Parliamentary and Municipal Registration Act, 1878, shall not apply, and the list and register of voters shall be made out alphabetically, but shall be framed in parts for polling districts and electoral divisions . . . in such a manner that the parts may be conveniently compiled, or put together to serve as lists for polling districts . . . and as electoral division lists. (4) Notwithstanding anything in this act contained, where a municipal borough or an urban district is co-extensive with any electoral division or divisions of a parliamentary county, the list of voters may be directed by the county council to be made out according to the order in which the qualifying premises appear in the rate book, and section 21 of the Parliamentary and Municipal Registration Act, 1878, shall apply to such borough or urban district, and where lists of voters are so made out, nothing in this Act shall require such part of the county register as consists of these lists to be arranged alphabetically. The names of the parliamentary electors and of the county electors in the lists may be numbered consecutively, and such portion of these lists as consists of the names of parliamentary electors may be taken to form the register for the purpose of parliamentary elections, and such portion of these lists as contains the names of county electors may be taken to form the register of county electors."

(*f*) See section 7 of the County Electors Act, 1888, set out in note (*a*) *supra*.

(*g*) This will not apply to county electors, for by section 7 of the County Electors Act, 1888, it is expressly provided that nothing in that section shall prevent a county elector from being registered in more than one division register.

(*h*) It is provided by 41 & 42 Vict. c. 26, s. 31, that the revising barrister shall, as part of the business of the revision, at the request of the town clerk of any municipal borough sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough. Every such duplicate shall be prepared by the town clerk at whose request it is so signed and shall be kept by him for use for municipal purposes. This section now applies to all boroughs, and also to parishes not in boroughs. See note (*a*) *supra*.

Arrangement of lists and rolls.

46. (1) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate-book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate.

(2) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

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This section will not apply to parishes not situate in a municipal borough, and even in boroughs it may be superseded by the County Electors Act, 1888, section 7 (4), set out in note (*e*) to the last section. It is there provided that, where a municipal borough or urban district is co-extensive with an electoral division or divisions of a parliamentary county, the lists of voters may be directed by the county council to be made out according to the order in which the qualifying premises appear in the rate-book, and section 21 of the 41 & 42 Vict. c. 26, shall apply to such borough or district. The 41 & 42 Vict. c. 26, s. 21, is substantially to the same effect as the text so far as regards the burgess lists and rolls. Therefore, if the county council make no order under section 7 of the County Electors Act, it will be open to the borough council to make an order under the provisions in the text.

Correction of burgess roll.

47. (1) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act.(*a*)

(2) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two months of the last sitting of the revision court, to the High Court in the Queen's Bench Division for a *mandamus* to the mayor to insert his name in the burgess roll; and thereupon the court shall inquire into the title of the applicant to be enrolled.(*b*)

(3) If the court grants a *mandamus*, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.(*b*)

(*a*) The parish burgess lists and the lists of county electors must now be revised in every case under the Act of 1878. By section 35 of that Act, "the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on a revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register, in pursuance of any judgment or order of the Court of Appeal, shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him." This provision will apply to the lists and roll of county electors with the necessary modifications.

(*b*) As no lists will henceforth be made out "under this Act," these subsections are practically repealed.

Printing and sale of burgess roll and other documents.

48. The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.

(2) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund.

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For the provisions of the County Electors Act, 1888, applying this section to the roll of county electors, see note (*a*) to section 45, *ante*, p. 229.

The 41 & 42, c. 26, s. 30, sub-sect. (1) of which now applies to all boroughs, provides that one-half of the moneys received in respect of the burgess lists shall be applied in the manner directed by the Parliamentary Registration Acts, and the other half shall be paid to the borough fund.

Separate list of persons qualified to be councillors but not to be burgesses.

49. (1) The overseers of each parish shall, at the same time that they make the parish burgess list, make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough.

(2) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

The separate non-resident list will continue to be made out in boroughs as heretofore. The list so made out in boroughs will contain the names of persons who are entitled to be enrolled as burgesses in all respects save that of residence within seven miles of the borough, but who, by reason of residence within the fifteen-mile limit, are qualified to be elected councillors under section 11, sub-sect. (2), *ante*, p. 206. If a person is enrolled on a borough non-resident list he will also be qualified to be elected a county councillor for the county of which the borough forms a part. See the Local Government Act, section 75, *ante*, p. 123.

A precisely similar list is to be made out for each county. The County Electors Act, 1888, section 12, provides that "a list of persons occupying property in a county, and residing within fifteen miles, but more than seven miles, from the county, shall be made out in accordance with section 49 of the Municipal Corporations Act, 1882, and that section shall apply as if it were herein re-enacted, with the substitution of 'county' for 'borough,' and of 'county elector' for 'burgess,' and of 'clerk of the peace' for 'town clerk.'" It is provided by the Local Government Act, section 76, *ante*, p. 133, that nothing in section 12 of the County Electors Act applies to any person occupying property in a borough. The reason of this provision is obvious; it avoids the necessity of including in the county non-resident list the names of persons who are enrolled in the corresponding list in the borough. But the result is that a person who occupies property in a borough, and who resides more than fifteen miles from the borough, will not be qualified to be elected a councillor, though his residence may be in the county, or within fifteen miles of its boundary. This hardship is more apparent than real, for such a person will generally be qualified as a county elector in respect of his residence.

In counties outside boroughs the overseers must make a separate non-resident list for their parishes. These lists will be revised by the revising barrister and arranged by the clerk of the peace, as provided by the above section.

As to the mode of measuring the distance, see section 231, *post*.

In the county of London there will be no separate non-resident list, for by section 77 of the Local Government Act, *ante*, p. 134, the persons whose names would appear upon it in London are to be registered as county electors.

Election of Councillors.

50. (1) Where a borough has no wards, there shall be one election of councillors for the whole borough. Borough and ward elections.

(2) Where a borough has wards, there shall be a separate election of councillors for each ward.

The Local Government Act, section 2, *ante*, p. 2, provides that the members of a county council shall be elected in like manner as the council of a borough divided into wards. The divisions of a county are to be called electoral divisions, and not wards. There will therefore be a separate election of councillors for each electoral division.

In a year in which county councillors are elected, the elections of these councillors, and of councillors of a borough, shall be conducted together; Local Government Act, section 75, *ante*, p. 121.

51. (1) At an election of councillors a person shall be entitled to subscribe a nomination paper,(*a*) and to demand and receive a voting paper, and to vote,(*b*) if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise. Title to vote.

(2) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward.(*c*)

(3) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.(*d*)

(*a*) As to nomination papers and nominations, see Sched. III., Part 2, *post*.

(*b*) But observe that though a person whose name is on the burgess roll (or roll of county electors, as the case may be) is entitled to vote, yet, unless he is entitled to be so enrolled, he is not qualified to be elected a councillor. See *Flintham* v. *Roxburgh*, *ante*, p. 205.

(*c*) It is provided by section 45, sub-sect. (6), *ante*, p. 229, that a burgess shall not be enrolled in more than one ward roll. But by the County Electors Act, 1888, section 7, sub-sect. (4), a county elector may be registered in more than one division register. It would appear, therefore, that notwithstanding the provision in the text, a county elector may vote at an election of county councillors in as many divisions as he may be registered in.

(*d*) Persons found guilty of corrupt or illegal practices, or of illegal payment, employment, or hiring at a municipal election, are prohibited from voting by 47 & 48 Vict. c. 70, s. 22, *post*.

52. The ordinary day of election of councillors shall be the first of November. Day of election.

The 1st of November will also, after the first election, be the ordinary day of election of county councillors. If, however, the 1st November is a Sunday, the day of election will be the 2nd. See section 230, *post*. And in a year in which county councillors are elected, the elections of those councillors, and of councillors of a borough, are to be conducted together. See the Local Government Act, section 75, *ante*, p. 121.

Sect. 52. NOTE. The first election of county councillors will, however, be held on a day to be fixed by the returning officer between the 14th and 31st January, 1889. See the Local Government Act, section 103, *ante*, p. 160.

Returning officer at election.

53. (1.) At an election of councillors for a whole borough the returning officer shall be the mayor.

(2) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the council at the meeting of the ninth of November.

It is provided by the Local Government Act, section 75, *ante*, p. 121, that such person as the county council may appoint shall be the returning officer for the election of county councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council. It has been pointed out in the note to section 50, *ante*, p. 233, that there must be a separate election for each electoral division. It will be necessary to appoint a returning officer for the entire county, corresponding to the mayor, who has special duties to perform in connection with the hearing of objections to nomination papers under schedule 3, part 2, rule 9, *post*. This official will be the county returning officer, and he will in all divisions of the county be returning officer in the place of the mayor and aldermen. He will have to appoint a deputy returning officer for each division in which he does not himself undertake the duties of his office.

The same section of the Local Government Act further provides that in a borough the returning officer, for the purpose of the election of councillors of the borough, shall be the same as heretofore, and where an electoral division of the county is co-extensive with, or wholly comprised in such borough, shall at the election in such division of a councillor of the county council, act as the returning officer in pursuance of a writ directed to him from the county returning officer, and so far as respects that election, shall follow the instructions of, and return the names of the persons elected to the county returning officer, in like manner as if he were a deputy returning officer, and any decision of an objection shall be subject to revision by the county returning officer accordingly. This provision requires careful consideration. Where the borough is not divided into wards, the mayor will be the deputy returning officer for the election of county councillors. But where the borough is divided into wards (which need not be co-extensive with the electoral divisions; see the Local Government Act, section 51, *ante*), it is not quite clear which of the aldermen is to act. It may probably be held that the county returning officer may select any alderman who is returning officer for any ward or part of a ward in the division. Again, the duty of hearing objections to nomination papers in a borough devolves upon the mayor. The same duty will devolve on the county returning officer unless he entrusts that power to his deputy, as he may do, under the Local Government Act, section 75, *ante*, p. 121. But if he deputes this duty, he has not under the Local Government Act nor, as is submitted, under any other Act, power to revise the decision of the deputy. In this respect the provision above quoted from the Local Government Act is hardly intelligible unless it is interpreted as giving, by implication, to the county returning officer the power to revise the decisions of his deputies on objections disposed of by them.

By the Local Government Act, section 75, *ante*, p. 124, the 7th of November is substituted for the 9th, as the day for holding a quarterly meeting of the county council. The county returning officer will, therefore, be appointed on that day.

At the first election of county councillors the sheriff of each county shall be the county returning officer, unless he is a candidate, in which case the returning officer shall be a person appointed by the quarter sessions. See the Local Government Act, section 103, *ante*, p. 160.

Sect. 54.

Notice of election.

54. Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

The ordinary day of election of councillors is the 1st November. In general the last day for giving notice under this section will be the 22nd October. But if the 1st November happens to be a Sunday, the day of election will be the 2nd November (see section 230, *post*), and the period of nine days must be reckoned with reference to that date. See 49 J. P. 675.

In elections of county councillors the returning officer must give this notice, which must be fixed in some conspicuous place in the electoral division. See section 232, *post*, and the Local Government Act, section 75, *ante*, p. 122.

Nomination of candidates.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

See the schedule, *post*.

Relation of nomination to election.

56. (1) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

In the event of a failure of election at the first election, the vacancy is to be filled in like manner as a casual vacancy in the county council may be filled, that is to say, by a new election in manner provided by section 40, *ante*, p. 226, and section 66, *post*. See the Local Government Act, section 107, *ante*, p. 167.

In subsequent elections the selection will be made by the returning officer. See the Local Government Act, section 75, *ante*, p. 121.

Where on a casual vacancy no proper nomination is made, a *mandamus* will be granted on the application of a burgess to hold the election, and the court will order the costs of the application to be paid by the Corporation. *Reg.* v. *Stratford-upon-Avon* (*Mayor of*), Times L. R., vol. ii., p. 431.

Publication of uncontested election.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

Sect. 57. NOTE. The hour must be determined by Greenwich time as provided by 43 & 44 Vict. c. 9. The ordinary day of election is the 1st November; see section 52, *ante*, p. 233. The day of election to fill a casual vacancy is the day fixed by the mayor, or in elections of county councillors by the returning officer under section 66, *post*.

Mode of conducting poll at contested election.

58. (1) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule,(*a*) and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.(*b*)

(3) The poll shall commence at nine o'clock in the forenoon and close at four in the afternoon of the same day.(*c*)

(4) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.(*d*)

(5) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance,(*e*) may give such additional vote by word of mouth or in writing.

(6) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorise the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.

(*a*) See the schedule, *post*.

(*b*) See the note to section 40, *ante*, p. 226, as to a case where ordinary and casual vacancies are filled at the same election.

(*c*) This provision is superseded by the 48 Vict. c. 10, which provides that at every municipal election the poll (if any) shall commence at eight o'clock in the forenoon, and be kept open until eight o'clock in the afternoon of the

same day, and no longer. The Local Government Act, s. 75, *ante*, p. 123, expressly provides that at an election of county councillors the hours of the poll shall be those fixed by the 48 Vict. c. 10. Sect. 58. Note.

(*d*) This provision also seems to be superseded by the 48 Vict. c. 10.

(*e*) This means that the returning officer may give this vote whether or not he is enrolled as a burgess or as an elector for the division, as the case may be.

59. (1) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions, or either of them : Questions which may be put to voters.

(*a*) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*] ?

(*b*) Have you already voted at the present election [*add in case of an election for several wards*, in this or any other ward] ?

(2) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4) Save as by this Act authorised, no inquiry shall be permitted at an election as to the right of any person to vote.

This section will apply to an election of county councillors with certain modifications. "County electors" must be substituted for "burgesses," "division register" for "ward roll," "county" for "borough," and "electoral division" for "ward." The second inquiry, however, is inapplicable if, as has been pointed out, a county elector can vote in as many divisions as he is registered in.

Election of Aldermen.(*a*)

60. (1) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council.(*b*) Time and mode of election of aldermen.

(2) The election shall be held immediately after the election of the mayor,(*c*) or, if there is a sheriff, the appointment of the sheriff.

(3) An outgoing alderman, although mayor elect, shall not vote.(*d*)

(4) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names(*e*) and places of abode and descriptions of the persons for whom he votes.

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(5) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.(*f*)

(6) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

(*a*) In county councils, the aldermen are to be called county aldermen. See the Local Government Act, section 2, *ante*, p. 2.

The first election of aldermen by the provisional county councils will be held on the second Thursday next after the day fixed for the first election. See the Local Government Act, section 105, *ante*, p. 164.

(*b*) In order to avoid the clashing of the quarterly meeting in boroughs with that of county councils, the Local Government Act, section 75, *ante*, p. 124, provides that the 7th of November shall be substituted for the 9th as the ordinary day of election of county aldermen, and as the day for holding a quarterly meeting of the county council.

(*c*) See the next section. If the election of aldermen precedes that of the mayor, it will be void. *Reg.* v. *McGowan*, 11 A. & E. 869. But it will be otherwise at the first election, for the county aldermen are to be elected at the first meeting of the provisional county council, and the chairman is to be elected at the second meeting. See the Local Government Act, section 105, *ante*, p. 164.

(*d*) It is provided by the Local Government Act, section 2, *ante* p. 2, that a county alderman shall not, as such, vote in the election of a county alderman. The meaning of the words "as such" is obscure. They may perhaps mean that a councillor who on the 7th November has been elected an alderman may vote for the other aldermen, but this is doubtful. In a borough council the aldermen may vote with the exception mentioned in the text. In a recent case, an alderman was elected mayor, and thereupon made and subscribed the declaration. He then voted in the election of aldermen. It was held that his vote was invalid, for at the time when he voted he had not ceased to be an outgoing alderman within the meaning of the text. *Bridport Election Petition, Hounsell* v. *Suttill*, 19 Q. B. D. 498 ; 56 L. J. Q. B. 502 ; 57 L. T. (N.S.) 102 ; 36 W. R. 127 ; 51 J. P. 440.

(*e*) The other names may probably be denoted by initials. See *Reg.* v. *Plenty*, L. R. 4 Q. B. 346, and the cases cited in the notes to section 241, *post*.

(*f*) In counties, the clerk of the council must keep the voting papers.

Election of Mayor.(*a*)

Time and mode of election of mayor.

61. (1) The ordinary day of election of mayor shall be the ninth of November.(*b*)

(2) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.(*c*)

(3) An outgoing alderman may vote although the person for whom he votes is an alderman.(*d*)

(4) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote.(*e*)

(*a*) In counties, the chairman of the county council is called chairman, instead of mayor. See the Local Government Act, section 2, *ante*, p. 4.

(*b*) The quarterly meeting of a county council is to be held on the 7th November. See note (*b*) to the preceding section.

(*c*) See *Reg.* v. *McGowan*, cited in the notes to the preceding section. At the first meeting of the provisional county council the councillors are to elect a chairman of the meeting and then proceed to elect the county aldermen. The first chairman of the county council will be elected at the second meeting of the council. See the Local Government Act, section 105, *ante*.

(*d*) An outgoing alderman is eligible. See section 15, sub-section (2), *ante*, p. 209.

(*e*) It is doubtful what this means. There does not appear to be a case in which the chairman is not entitled to vote in the first instance.

Election of Auditors and Assessors.

Time and mode of election of auditors and assessors.

62. (1) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.

(2) The ordinary day of election of revising assessors shall be the first of March.

(3) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(4) An elector shall not vote for more than one person to be elective auditor or revising assessor.

(5) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.

(6) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors.

It is provided by the Local Government Act, section 75, *ante*, p. 124, that the provisions of this Act as to borough auditors shall not apply to county councils.

Revising assessors are no longer to be elected in any borough. See the note to section 29, *ante*, p. 218.

Sect. 63.

Supplemental and Exceptional Provisions.

Right of women to vote.

63. For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

The County Electors Act, 1888, section 2, extends the provisions of this section to so much of every county as is not comprised within the limits of a municipal borough. Women are therefore qualified to be enrolled and to vote as burgesses or county electors. But it is to be inferred from this section that women may not be elected. Had no express provision been made, a woman might have been deemed a "person" within the meaning of sections 9 and 11, having regard to the provisions of 13 & 14 Vict. c. 21. But this section by providing in effect that a woman shall be a "person" within section 9, implies that she is not a person within section 11. The right of women to vote under this section does not extend to married women. See *Reg.* v. *Harrald*, L. R. 7 Q. B. 361; 41 L. J. Q. B. 173; 26 L. T. (N.S.) 616; 20 W. R. 328; 36 J. P. 438.

Polling districts.

64. The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, so far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

For the purposes of the first election of county councillors the returning officer may, if it appear to him necessary, divide an electoral division into polling districts, so however that every polling district shall be an area or combination of areas for which separate parts of the register of electors are made out, and he shall settle and give proper notice of the places at which the poll for each electoral division or district of a division shall be taken.

In a parish which is not within a municipal borough, the lists of voters are to be framed in parts for polling districts and electoral divisions, and for urban districts and for wards in such a manner that the parts may be conveniently compiled or put together to serve as lists for polling districts and elections in urban districts and as electoral division or ward lists. See the County Electors Act, 1888, section 4, sub-section (2), amended by the Local Government Act, section 76, *ante*, p. 131.

Notices as to elections

65. Any notice required to be given in connection with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

The provisions as to elective auditors do not apply to elections of county councillors, and revising assessors are no longer to be elected. See the note to section 62, *ante*, p. 239. The provision as to notices will, however, apply to elections of county councillors, and will enable one notice to be given comprising matter necessary for several electoral divisions.

Time for filling casual vacancies.

66. (1) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk. Sect. 66. Sub-s. 2.

(3) In other cases the day of election shall be fixed by the mayor.

As to the holding of elections to fill casual vacancies, see section 40, *ante*, p. 226.

For a case where there was no valid nomination to fill a casual vacancy, see *Reg.* v. *Stratford-upon-Avon*, *ante*, p. 235.

The notice of a casual vacancy may be given by any two burgesses or county electors. It may be given in county councils to the chairman or clerk of the council.

As to the election to fill casual vacancies at the first election of county councillors, see the Local Government Act, section 107, *ante*, p. 167, and the note to section 56, *ante*, p. 235.

It seems that the word "mayor" in sub-section (1) must be read as "chairman of the county council," but whether this be so or not the word must be read as standing for "returning officer" in sub-section (3). See the Local Government Act, section 75, *ante*, p. 121.

67. (1) If the mayor is dead, or is absent, or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor. Illness, &c. of mayor or returning officer.

(2) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not exceed the number of wards, a councillor, not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

This section does not apply to county councils, unless it is read as an express provision that in case of the death, &c., of the county returning officer the county council may appoint another person in his stead. The county council appoint the county returning officer under section 75 of the Local Government Act, *ante*, p. 121, and there seems to be no reason why they should not, without the aid of this section, appoint another person in case of his death, &c. Sub-section (2) cannot apply, for the county returning officer is to be substituted for the aldermen as well as for the mayor. See the note to section 53, *ante*, p. 234.

68. If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare for which of those wards he shall serve, and the choice or declaration shall be conclusive. Election of councillor in more than one ward.

The reference to the mayor and town clerk must be read as a reference to the returning officer, having regard to the Local Government Act, section 75, sub-sections (4) and (5), *ante*, p. 121.

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Upon the declaration being made a casual vacancy will be created in the division or ward for which the councillor has elected not to serve. As to the filling up of such casual vacancies, see section 40, *ante*, p. 226; section 66, *ante*, p. 240; and as to the filling up of such vacancies at the first election, see the Local Government Act, section 107, *ante*, p. 167.

Elections not in churches.

69. A municipal election shall not be held in any church, chapel, or other place of public worship.

Omission to hold election, or election void.

70. (1) If a municipal election is not held on the appointed day, or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2) If a municipal election is not held on the appointed day, or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court.(*a*)

(3) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall,(*b*) and shall be kept so fixed for at least six days before the day appointed for the election; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

(*a*) For a case where a *mandamus* was granted, see *Reg.* v. *Stratford-upon-Avon*, *ante*, p. 235.

(*b*) See section 231, *post*. In the election of county councillors the notice may be fixed in a conspicuous place in the division.

The Local Government Board has extensive power to remedy defects in and about a first election of county councillors. See the Local Government Act, section 108, *ante*, p. 168.

Burgess roll to be in operation until revision of new burgess roll.

71. (1) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

(2) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force untill the new burgess roll is made.

At the first election of county councillors, if the register of electors is not properly made up, the Local Government Board have power to remedy the defect under section 108 of the Local Government Act, *ante*, p. 168.

The roll of county electors need not be made up in the present year (1888) before the 31st December; but in future years it must, like the burgess roll of a borough, be made up on or before the 20th October.

The above section is expressly applied to elections of county councillors by section 7 of the County Electors Act, 1888. See the section quoted, *ante*, p. 229.

Sect. 72.

Non-compliance with rules.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

See Schedule 3, *post.*

Schedule 8 is not incorporated by the Local Government Act except as to the Forms of Declaration in Part I.

Election valid unless questioned within twelve months.

73. Every municipal election not called in question within twelve months after the election, either by election petition or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election.

A municipal election must be questioned by means of an election petition, and cannot be questioned by *quo warranto* on any of the grounds mentioned in section 87, *post.* That section does not, however, apply to prevent proceedings in the nature of *quo warranto* against a person who has been duly elected and subsequently becomes disqualified. As to the time within which proceedings by way of *quo warranto* must be taken, see section 225, *post.*

Offences in relation to nomination papers.

74. (1) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2) An attempt to commit any such offence shall be punishable as the offence is punishable.

Where a person signed the name of a voter to a paper with the consent of the voter's wife, but without his knowledge and believing that he might do so, it was held that he could not be convicted of *fabricating* the voting paper within the meaning of 21 & 22 Vict. c. 98, s. 13. *Aberdare Local Board* v. *Hammett*, L. R. 10 Q. B. 162; 44 L. J. M. C. 49; 32 L. T. (N.S) 20; 39 J. P. 69.

In a recent case the respondent, a candidate at a local board election, called at the house of a voter to whom a voting paper had been sent, and asked her how she intended to vote, and to hand him the voting paper, which she did. He then inquired if she knew how to fill it up, and she replied in the affirmative. The respondent thereupon, without any authority, express or implied, from the voter, wrote in pencil the initials of the voter against his own name. The voter objected to his doing so. The respondent left the voting paper with the voter with her initials so written by him against his own name, but with no other mark upon it. The voter subsequently struck out the initials so written by the respondent and placed his initials against the names of three other candidates, and signed her own name to the voting paper. It was found that the respondent so pencilled the initials of the voter with the intent of indicating on her behalf that she intended to vote for him, and of inducing and procuring her to vote for him. The respondent was successful at the poll. A petition

Sect. 74. NOTE. was presented against his return, on the ground of illegal practices, *inter alia*, of fabricating in whole or in part a voting paper, and of falsely assuming to act in the name or on behalf of a voter. It was held that the act of the respondent did not amount to a fabrication in whole or in part of the voting paper, nor to falsely assuming to act in the name or on behalf of the voter. *Gough* v. *Murdoch*, 57 L. T. (N.S.) 308; 35 W. R. 836; 51 J. P. 471.

Offences in relation to lists and elections.

75. (1) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, (*a*) or a mayor or alderman (*b*) neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action. (*c*)

(2) If—

(*a*) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act; or

(*b*) A town clerk (*d*) neglects or refuses to receive, print, and publish a parish burgess list or list of claimants or respondents, as required by this Act; or

(*c*) An overseer or town clerk (*d*) refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action. (*c*)

(3) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

(*a*) It has already been pointed out that in future no parish burgess list will be revised by the mayor and revising assessors. See section 44, *ante*, p. 228, and the notes thereto.

(*b*) In applying this section to county councils the returning officer must be substituted for the mayor or alderman. See the Local Government Act, section 75, *ante*, p. 121.

(*c*) See section 226, *post*. But observe that by sub-section (3) the action must be brought within three months.

(*d*) This will apply to the clerk of a county council with regard to the county electors' lists.

Revival of former law on expiration of Ballot Act.

76. (1) If the Ballot Act, 1872, ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine. Sect. 76. Sub-s. 2.

The Ballot Act, 1872, is continued in force until the 31st December, 1889, by the Expiring Laws Continuance Act, 1888, 51 & 52 Vict. c. 38.

PART IV.

Corrupt Practices and Election Petitions.

Corrupt Practices.

77. In this Part— Definitions.

"Bribery," "treating," "undue influence," and "personation," (*a*) include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections: (*b*)

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election court" means a court constituted under this Part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election:

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868:

"Prescribed" means prescribed by general rules under this Part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.

(*a*) The definition of these offences will be found in the Municipal Elections (Corrupt Practices) Act, 1884, 47 & 48 Vict. c. 70, sched. 3, *post*, which amends this part of the Municipal Corporations Act, 1882, and is incorporated with the Local Government Act by section 75, *ante*, p. 120.

(*b*) The definition of "corrupt practice" and "canvasser" are repealed by 47 & 48 Vict. c. 70, *post*.

Sect. 78. **78.** * * * **79.** * * * **80.** * * *

These sections were repealed by the 47 & 48 Vict. c. 70, *post*.

Avoidance of election for general corruption.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

82. * * * **83.** * * * **84.** * * *

These sections were repealed by 47 & 48 Vict. c. 70, *post*.

Striking off votes.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

The 47 & 48 Vict. c. 70, s. 22, *post*, provides that every person guilty of a corrupt or illegal practice, or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny. This provision is of wider application than the above section, and practically supersedes it.

Personation.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

These enactments are contained in 6 Vict. c. 18, ss. 85—89, which are incorporated with the Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24. They provide for the appointment of agents to detect personation at the time of polling, for the giving of persons charged with personation into custody, and for the proceedings before justices on the charge.

Election Petitions.

Power to question municipal election by petition.

87. (1) A municipal election may be questioned by an election petition on the ground—

(*a*) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation ;(*a*) or

(*b*) That the election was avoided by corrupt practices or offences against this Part committed at the election ;(*b*) or

(*c*) That the person whose election is questioned was at the time of the election disqualified ;(*c*) or

(*d*) That he was not duly elected by a majority of lawful votes.(*d*)

(2) A municipal election shall not be questioned on any of those grounds except by an election petition.(*e*)

(*a*) For the definition of these offences, see schedule 3 of the 47 & 48 Vict. c. 70, *post*, and the notes to that schedule.

(*b*) An election may also be questioned for illegal practices. See 47 & 48 Vict. c. 70, s. 25, *post*. P 305. Sect. 87. NOTE.

(*c*) This applies only to disqualifications existing at the time of the election. If a councillor becomes disqualified after he has been elected, the proper remedy is by *quo warranto*. Where the mayor disallowed an objection to a nomination paper, relating not to its form, but to the time of its delivery, it was held that this decision might be questioned on petition under the provision in the text. *Howes* v. *Turner*, 1 C. P. D. 670; 45 L. J. C. P. 550; 35 L. T. (N.S.) 58. BRETT, J., pointed out that the word *disqualified* was not limited to personal disqualification only.

Under schedule 3, part 2, rule 7, *post*, a nomination paper must be delivered by the candidate, or his proposer or seconder, personally, and not by an agent. A nomination objected to on this ground is cognizable by the mayor, whose decision allowing it may be questioned on petition. *Monks* v. *Jackson*, 1 C. P. D. 683; 46 L. J. C. P. 162; 35 L. T. (N.S.) 95.

(*d*) In this case the petition will involve a scrutiny. Where a returning officer has improperly allowed an objection to a nomination paper, a petition lies under this head, for if the paper had not been rejected the votes might have been differently given. *Budge* v. *Andrews*, 3 C. P. D. 510; 47 L. J. C. P. 586; 39 L. T. (N.S.) 166.

(*e*) It follows from this provision that *quo warranto* will not lie on any of the grounds mentioned in this section.

At a municipal election A. and B. were candidates for the office of councillor. A. obtained a majority of votes over B., and was declared elected, but refused to serve. B. thereupon claimed to have been elected, and having made the necessary declaration, acted on several occasions as councillor. A petition was presented against both A. and B., and both of them gave notice of their intention not to oppose the petition. No notice of A.'s disqualification was given to the electors. On an application by B. to the court that his name might be struck out of the petition, the court refused the application on the ground that he was properly made a respondent. *Yates* v. *Leach*, L. R. 9 C. P. 605; 43 L. J. C. P. 377; 30 L. T. (N.S.) 790.

Where a councillor became disqualified through having made a composition with his creditors, but his office was never declared vacant under section 39, *ante*, p. 225, and he was afterwards re-elected, it was held that if there was any remedy in such a case it was by petition, and not by *mandamus*, to declare the office void. *Reg.* v. *Welshpool* (*Mayor of*), 35 L. T. (N.S.) 594.

88. (1) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election. Presentation of petition.

(2) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.(*a*)

(3) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.(*b*)

(4) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or

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promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.(*c*)

(*a*) A petition may be presented against some only of the persons returned, though the ground of the petition is one affecting the validity of the election as a whole; and the Court can in such a case declare the person so petitioned against not to have been duly elected. *Line* v. *Warren*, 14 Q. B. D. 548; 54 L. J. Q. B. 291; 49 J. P. 516.

An unsuccessful candidate at an election cannot be made a respondent to a petition, although he coalesced for the purposes of the election with two successful candidates, so as to be responsible equally with them for any acts done by any of the three in furtherance of the common purpose. *Lovering* v. *Dawson*, L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. (N.S.) 819.

Where a mayor *bonâ fide* decides on an objection to a nomination paper, a complaint of such decision as erroneous is not a complaint of the conduct of the mayor within the meaning of this section. *Harman* v. *Park*, 6 Q. B. D. 323; 50 L. J. Q. B. 227; 44 L. T. (N.S.) 81; 29 W. R. 750; 45 J. P. 436.

(*b*) The word "prescribed" here means prescribed by general rules. See section 77, *ante*, p. 245; see also section 100, *post*, and the rules made thereunder which are set out, *post*.

In applying this sub-section to county council elections, the term "town clerk" must be read "clerk of the council," and "borough" as "county." The publication should evidently be made in the electoral division to which it relates.

(*c*) If the petition is founded on an illegal practice it must be presented within fourteen days after the date when the town clerk or clerk of the council receives the return and declaration respecting election expenses; and in the event of an illegal practice after the election within twenty-eight days thereafter; 47 & 48 Vict. c. 70, s. 25, *post*. By the same section it is provided that any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended, with the leave of the High Court, within the time within which a petition complaining of the election on the ground of that illegal practice can, under that section, be presented.

The Court cannot after the period of twenty-one days here mentioned allow an amendment which would practically amount to a new petition, as by adding a charge of treating. *Clark* v. *Lowley*, 52 L. J. Q. B. 321; 48 L. T. (N.S.), 762; 31 W. R. 551; 47 J. P. 551.

Security for costs.

89. (1) At the time of presenting an election petition, or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner,(*a*) either by a deposit of money, or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.

(3) Within five days after the presentation of the petition the

petitioner shall in the prescribed manner(*b*) serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4) Within five days after service of the notice the respondent may object in writing to any recognizance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

(5) An objection to a recognizance shall be decided in the prescribed manner.(*c*)

(6) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient.

(7) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

(*a*) See rules 16 to 38, *post*.

(*b*) See rules 14, 15, *post*. By rule 36, the petitioner or his agent must file an affidavit of the time and manner of the service immediately after such service. The observance of these provisions as to service of the petition is a condition precedent to the trial of the petition. *Williams* v. *Tenby (Mayor of)*, 5 C. P. D. 135 ; 49 L. J. C. P. 325 ; 42 L. T. (N.S.) 187 ; 28 W. R. 616 ; 44 J. P. 348.

(*c*) See rules 27—34, *post*.

90. On the expiration of the time limited for making objections, or, after objection made on the objection being disallowed or removed, whichever last happens, the petition shall be at issue. Petition at issue.

The objections here referred to are the objections to recognizances under the preceding section.

91. (1) The prescribed officer(*a*) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.(*b*) Municipal election list.

(2) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent.(*c*)

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(4) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough,(*d*) they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

(*a*) That is, the master for the time being nominated as prescribed officer. See rule 1, *post*.

(*b*) As to the making out of the list and the inspection of such lists, see rule 39, *post*.

(*c*) See *Line* v. *Warren*, *ante*, p. 248.

(*d*) This must, in relation to county council elections, be read as "different electoral divisions of the same county."

Constitution of election court.

92. (1) An election petition shall be tried by an election court, consisting of a barrister, qualified and appointed as in this section provided, without a jury.

(2) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years' standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions.(*a*)

(5) If a commissioner to whom the trial of a petition is assigned dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

(*a*) The remainder of this sub-section was repealed by 47 & 48 Vict. c. 70, schedule 2, *post*. Section 36, sub-section (2), of that Act, *post*, contains the substituted provision. It provides that the judges may annually appoint a number of barristers, not exceeding five, to be commissioners for the trial of

election petitions, under Part IV. of the Municipal Corporations Act and that Act, and shall from time to time assign the petitions to be tried by each commissioner. Sect. 92. NOTE.

Trial of election petition.

93. (1) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.(*a*)

(2) The place of trial shall be within the borough,(*b*) except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.(*c*)

(3) The election court may in its discretion adjourn the trial from time to time,(*d*) and from any one place to any other place within the borough,(*b*) or place where it is held.

(4) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election, the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(*a*) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

(*b*) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part;

(*c*) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.(*e*)

(6) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High

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Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.(*f*)

(8) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius.

(9) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10) On the trial of a petition complaining of an undue election, and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.(*g*)

(11) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.(*h*)

(12) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.(*i*)

(*a*) See rules 40, 42, *post*. See also rule 43 as to the postponement of the trial if the barrister does not arrive in time.

(*b*) Or county, in case of a petition against the election of a county councillor.

(*c*) Where the allegations of fact in a petition are not in dispute, but are specifically admitted by the respondent, so as to render it unnecessary at the trial to call witnesses from the district in which the election took place, the court may order the petition to be tried in London, on the ground that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the county or division where the election took place. *Arch* v. *Bentinck*, 18 Q. B. D. 548; 56 L. J. Q. B. 458; 56 L. T. (N.S.) 360; 35 W. R. 476.

(*d*) A formal adjournment is not necessary. See rule 45, *post*. Sect. 93. NOTE.

(*e*) The court must further report as to illegal practices in manner prescribed by 47 & 48 Vict. c. 70, s. 8, sub-section (2), *post*.

(*f*) Notwithstanding this sub-section, if leave be given, appeal lies from a judgment of the Queen's Bench Division to the Court of Appeal. *Line* v. *Warren*, *ante*, p. 248.

(*g*) In this case the respondent must deliver to the master, six days before the day appointed for trial, a list of the objections to the election upon which he intends to rely, and the master is to allow inspection and office copies of such list to all parties concerned; and no evidence is to be given by the respondent of any objection not specified in the list, except by leave of the High Court. See rule 8, *post*.

(*h*) The respondent may have ceased to hold office by having resigned or become disqualified.

(*i*) The clerk of the county council must, in relation to county council elections, be substituted for the town clerk.

94. (1) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury.(*a*) Witnesses.

(2) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.(*b*)

(3) The court may examine any person so required to attend, or being in court, although he is not called and examined by any party to the petition.

(4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent, or either of them.(*c*)

(9) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.(*d*)

(*a*) As to the order of the court to compel the attendance of a witness, see rule 54, *post*.

(*b*) As to the procedure in a committal for contempt of court, see rules 55, 56, *post*.

(*c*) Sub-sections (5)—(8), are repealed by the 47 & 48 Vict. c. 70, *post*.

(*d*) As to the costs of providing a court, see section 101, *post*; as to the costs of the petition, see section 98, *post*.

95. (1) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special Withdrawal of petition.

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application, made in the prescribed manner, and at the prescribed time and place.(*a*)

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.(*b*)

(3) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.(*c*)

(4) If the proposed withdrawal is, in the opinion of the court, induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that, to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5) If the court does not so direct, then security to the same amount as would be required in the case of a new petition,(*d*) and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.(*e*)

(8) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

(*a*) The form of notice of application to withdraw a petition is prescribed by rule 58, *post*. The notice of application is to be left at the master's office, and copies are to be served on the respondent and on the town clerk or clerk of the council, as the case may be, and published in the borough or county to which the petition relates. See rules 59, 60, *post*.

The petitioners, who had presented a petition and subsequently found out that their agent's report, upon which the petition was based, was untrustworthy, were allowed by the Court to withdraw the petition, the Treasury having ascertained by special inquiry that there was no reliable evidence to support it, and having received from the petitioners copies of the reports and details of the subsequent inquiries. On a motion for leave to withdraw a petition, the Court has a discretion as to the costs of the parties, and may order them to be paid by the petitioners on the higher scale and taxed as between solicitor and client. They cannot give costs to the Public Prosecutor. *Pascoe* v. *Puleston*, 54 L. T. (N.S.) 733; 50 J. P. 135.

After a municipal election a petition was presented by an unsuccessful candidate, claiming that he was returned by a majority of lawful votes. The mayor, to save expense, induced the petitioner and the returned candidate to

submit the question to the arbitration of the town clerk, who was to re-count the votes. On the award being against the petitioner, he asked leave to withdraw the petition, and the Court allowed him to do so on payment of the costs, the Public Prosecutor not opposing. *Mallam* v. *Bean*, 51 J. P. 230. Sect. 95. NOTE.

(*b*) See rule 59, *post*.
(*c*) See rule 61, *post*.
(*d*) See section 89, *ante*, p. 248.
(*e*) See *Pascoe* v. *Puleston*; *Mallam* v. *Bean*, *supra*.

Abatement of petition.

96. (1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

As to notice of abatement of a petition, and the procedure on the application to be substituted as a petitioner, see rule 63, *post*.
As to security for costs, see section 89, *ante*, p. 248.

Withdrawal and substitution of respondents.

97. (1) If before the trial of an election petition a respondent other than a returning officer(*a*)—

(*a*) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(*b*) Gives the prescribed notice that he does not intend to oppose the petition;(*c*)

the prescribed notice thereof shall be given in the borough,(*d*) and within the prescribed time(*e*) after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

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(*a*) The returning officer may be a respondent if the petition complains of his conduct. See section 88, sub-section (2), *ante*, p. 247. See also rule 64, *post*.

(*b*) The respondent may cease to hold office through disqualification.

(*c*) The notice is prescribed by rule 65, *post*. The name of a respondent will not be struck out of the petition merely because he has given this notice. See *Yates* v. *Leach*, *ante*, p. 247.

(*d*) See rule 66, *post*.

(*e*) The prescribed time is ten days. See rule 67, *post*.

Costs on election petitions.

98. (1) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which, in the opinion of the court, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.(*a*)

(2) The costs may be taxed in the prescribed manner, but according to the same principle as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed.(*b*)

(3) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer(*c*) shall thereon certify the recognizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition.(*d*)

(*a*) An overloaded petition will be visited with costs, even if it is successful. *Birkbeck* v. *Bullard*, 54 L. T. (N.S.) 625. When a petition is wholly unfounded the Court may order the petitioner to pay the costs of the Public Prosecutor. *Crossman* v. *Gent-Davis*, 54 L. T. (N.S.) 628. In certain cases the parties may be ordered to pay the expenses of the election court. See section 101, *post*.

The barrister appointed to try the petition has an absolute discretion over the costs. In a case where the petitioner had improperly made an unsuccessful candidate a respondent, it was held that they could not object that he was not

a party to the petition so as to deprive the barrister of jurisdiction to make an order upon them for his costs. *Lovering* v. *Dawson*, L. R. 10 C. P. 726; 44 L. J. C. P. 321; 32 L. T. (N.S.) 823.

(*b*) So much of this sub-section as relates to the principle of taxation is repealed by 47 & 48 Vict. c. 70, *post*. As to the mode of taxation and recovery of the costs, see rule 68, *post*, and *Pare* v. *Hartshorn*, 31 L. T. (N.S.) 486; 23 W. R. 138.

(*c*) That is, the Master. See rule 1, *post*.

(*d*) That is, in manner provided by 30 & 31 Vict. c. 125, s. 42.

Reception of and attendance on the election court.

99. (1) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.(*a*)

(2) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) The election court may employ officers and clerks as prescribed.(*b*)

(4) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.(*c*)

(*a*) This duty will, in county council elections, devolve upon the clerk to the council (see the Local Government Act, section 75, sub-section (5), *ante*, p. 122). The expenses will be payable out of the county fund.

(*b*) See rules 50, 51, *post*.

(*c*) The shorthand writer is to be the shorthand writer to the House of Commons or his deputy. See rule 52, *post*.

Rules of procedure and jurisdiction.

100. (1) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon.(*a*)

(2) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then

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sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3) Subject to the provisions of this Act,(*b*) and of the rules under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.(*c*)

(5) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.(*d*)

(6) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

(*a*) See also 47 & 48 Vict. c. 70, s. 30, *post*. The rules now in force are set out *post*.

(*b*) See *Clarke* v. *Lowley*, *ante*, p. 248; *Lovering* v. *Dawson*, *ante*, p. 248.

(*c*) The High Court has no power to entertain an appeal against the decision of a commissioner appointed to inquire into alleged corrupt or illegal practices at an election, except on points of law reserved for its decision by way of a case stated by the commissioners. *Ex parte Ayres*, 54 L. T. (N.S.) 296. A petition against the election of members of a local board alleged undue influence by the respondents and their agents, and that corrupt and illegal practices extensively prevailed. The commissioner reported to the High Court that no corrupt practice had been proved against the respondents or otherwise, that illegal practices extensively prevailed, and that the respondents had been guilty of illegal practices; and he certified that the respondents had not been duly elected. On a motion for a new trial or a prohibition, on the ground that the petitioner had exceeded his jurisdiction, it was held that the report was not in excess of the jurisdiction. *Quære*, whether the Court has jurisdiction to entertain an appeal from a commissioner. Per Stephen, J. The jurisdiction, if any, ought only to be exercised under extraordinary circumstances, and when necessary that justice should be done. *Goole Election Petition*, Times Reports, vol. ii. p. 398.

(*d*) That is, by the Master. See rule 1, *post*.

Expenses of election court.

101. (1) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election

petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate.(*a*)

(2) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court,(*b*) shall be repaid, wholly or in part, to the Treasury or to the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(*a*) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(*b*) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs;(*c*) but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

(*a*) In the case of a county council these expenses will be payable out of the county fund.

(*b*) See section 99, *ante*, p. 257. The reference to the town clerk includes a reference to the clerk to the county council. See the Local Government Act, section 75, sub-section (5), *ante*, p. 122.

(*c*) See section 98, *ante*, p. 256.

Upon the trial of a petition against the return of a borough councillor under the Municipal Elections (Corrupt Practices) Act, 1872, the barrister in delivering judgment said that he found the councillor guilty of personal bribery, and that all the costs of the inquiry were to be borne by him, and made an order in writing for the payment by the councillor of certain costs under section 19 of that Act. The written order made no provision for the remuneration and allowances to the barrister and other persons under section 22 (corresponding to the text). The Treasury paid the amount of such remuneration and allowances, and certified the payment to the borough treasurer, and required him to repay them the amount out of the borough fund. A rate was accordingly made and levied. The Treasury afterwards, on receiving from the barrister a letter that he had always intended to visit all the costs upon the councillor, and had said so in giving judgment, cancelled their certificate, and the borough corporation abandoned the rate and returned the sums levied to the ratepayers. Afterwards, the Treasury, finding that the barrister had made no written order for the payment of the remuneration and allowances, issued a fresh certificate requiring the borough treasurer to repay them the amount out of the borough fund or rates. These facts being found upon a return to a

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mandamus commanding the treasurer to repay the Treasury, it was held that no valid order had been made by the barrister for the payment of the remuneration and allowances by the councillor; that the election court was a court of record, and that neither the High Court nor the Court of Appeal on the return could amend the order so as to make it include such payment; that the act of the Treasury in certifying was not a judicial act, and that they had the power to make a second certificate, and were entitled to a peremptory *mandamus* compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough fund or rates, and compelling the corporation to order such amount to be levied by a borough rate. *Reg.* v. *Maidenhead* (*Mayor of*), 9 Q. B. D. 494; 51 L. J. Q. B. 444; 46 J. P. 724.

Acts done pending a petition not invalidated.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Provisions as to elections in the room of persons unseated on petition.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy;(*a*) and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.(*b*)

(*a*) As to the manner in which casual vacancies are to be filled up, see section 40 and the notes thereto, *ante*, p. 226.

(*b*) The reference to the mayor and aldermen must, with regard to elections of county councils, be read as a reference to the returning officer (see the Local Government Act, section 75, sub-section (4), *ante*, p. 121), and to the sheriff in case of a casual vacancy arising at the first election (*ib.* section 107, sub-section (2), *ante*, p. 167).

Prohibition of disclosure of vote.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

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PART V.

Corporate Property and Liabilities.(*a*)

Misapplication of Corporate Property.

Prohibition of expenditure of corporate funds on parliamentary elections.

124. (1) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2) Any bond, covenant, recognizance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3) Any payment, application, bond, covenant, recognizance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5) Any resolution, bye-law, or other proceeding of a council, purporting to direct or authorise any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6) If any member of a municipal corporation authorises or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

Sect. 124. Sub-s. 7.

(7) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

(*a*) This is the only section of Part V. which is applied to county councils. See the Local Government Act, section 75, *ante*, p. 120.

PART XII.

Legal Proceedings.

Prosecution of offences and recovery of fines.

219. (1) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.(*a*)

(2) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions.(*b*)

(3) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.(*c*)

(*a*) This provision was unnecessary, having regard to 11 & 12 Vict. c. 43, s. 11, and 42 & 43 Vict. c. 49, s. 51.

(*b*) The procedure on such appeals is regulated by 42 & 43 Vict. c. 49, s. 31.

(*c*) As to the procedure in actions against corporate officers, see section 224, *post*.

Exclusion of *certiorari*.

220. A conviction, order, warrant, or other matter made or done, or purporting to be made or done, by virtue of this Act shall

not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by *certiorari* or otherwise into the High Court. Sect. 220.

Notwithstanding this provision, a writ of *certiorari* will be granted where the proceedings show on the face of them a want of jurisdiction. *Reg.* v. *Gosse*, 3 E. & E. 277; 30 L. J. M. C. 41; 3 L. T. (N.S.) 404; *Broughton Local Board, Re*, 12 L. T. (N.S.) 310; *Reg.* v. *Staffordshire (Justices of)*, 16 L. T. (N.S.) 430; *Reg.* v. *Rose* or *Wood*, 5 E. & B. 49; *Colonial Bank of Australasia* v. *Willan*, L. R. 5 P. C. 417; 43 L. J. P. C. 39; 30 L. T. (N.S.) 237; 22 W. R. 516. In the case last mentioned it was laid down that when a *certiorari* is said to be taken away by statute, the superior court is not absolutely deprived of the power to issue the writ; but its action as to the writ is controlled and limited, and it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or of manifest fraud in the party procuring it. Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior court by affidavit, but they must be intrinsic to the adjudication impeached. Objections on the ground of defect of jurisdiction may be founded on the character and constitution of an inferior court, the nature of the subject matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the inferior court. The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try. *Ibid.* And see *Bradlaugh, Ex parte*, 3 Q. B. D. 509; 43 J. P. 125, and the cases cited in *Paley on Convictions*, 6th edition, at p. 430.

Where both parties agreed to waive this provision, and stated a case for the opinion of the court, the fact that the corresponding section in 11 & 12 Vict. c. 63, had taken away the *certiorari*, was held not to prevent the court from determining the question. *Reg.* v. *Dickenson*, 7 E. & B. 831; 26 L. J. M. C. 204; 3 Jur. (N.S.) 1076; 22 J. P. 243.

As to the practice relating to the removal of convictions, &c., by *certiorari*, see *Paley on Convictions*, chap. iv. s. 2. See also the *Crown Office Rules*, Nos. 28—42. It was held that the six days' notices to the justice, under No. 33 of these rules, as a preliminary to the grant of a writ of *certiorari*, must precede the motion for a rule *nisi*, and not merely the motion for the rule absolute. *Ex parte Roberts*, 50 J. P. 567. An application for *certiorari* to the Queen's Bench Division does not lie after conviction and judgment in the superior court. *Nally* v. *The Queen*, 16 L. R. Ir. 1, 15 Cox C. C. 638.

The reference in the section to an order for payment of money out of the borough fund has no application to county councils, a provision corresponding to that referred to being expressly made in the Local Government Act, section 80, sub-section (2), *ante*, p. 137.

The above section will not apply to county councils, for by the Local Government Act, section 75, sub-section (16), *ante*, p. 124, it is provided that nothing in the Municipal Corporations Act, 1882, as applied by that section, shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner.

Application of penalties in quarter sessions boroughs.

221. (1) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a

Sect. 221. Sub-s. 1.

separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

(2) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(*a*) Directs payment thereof to the informer or to any person aggrieved; or

(*b*) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or

(*c*) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

In a borough which has not a separate court of quarter sessions, though it has a separate commission, unappropriated penalties are payable in manner provided by 11 & 12 Vict. c. 43, s. 31, to the county treasurer. *Reigate (Mayor, &c., of)* v. *Hart*, L. R. 3 Q. B. 244; 37 L. J. M. C. 70; 18 L. T. (N.S.) 237; 16 W. R. 896; *Winn* v. *Mossman*, L. R. 4 Ex. 492; 38 L. J. Ex. 203; 20 L. T. (N.S.) 672; 33 J. P. 743.

It has been held that penalties recovered under the Regulation of Railways Act, 3 & 4 Vict. c. 97, are payable to the borough fund, and not to the Crown. *Attorney-General* v. *Moore*, 3 Ex. D. 276; 47 L. J. M. C. 103; 38 L. T. (N.S.) 251; 26 W. R. 366; 42 J. P. 7.

As to the appropriation of penalties under local Acts applying to boroughs, see *Alison* v. *Charlesworth*, 49 J. P. 294; *Alison* v. *Hall*, Times L. R. vol. iv. p. 524.

Duties of clerk of peace as to fines and forfeitures.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

This section cannot apply to county councils, for in all counties, except London, the clerk of the council and the clerk of the peace will be the same person. See the Local Government Act, section 83, *ante*, p. 140.

Service of summons or warrant.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any

distance not exceeding seven miles from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed. Sect. 223.

It would appear that this section will now apply to process issued by county justices, which may, therefore, be served or executed within seven miles of the county without being backed.

Procedure in penal actions against corporate officers.

224. (1) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.(*a*)

(2) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.(*b*)

(3) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

(*a*) See section 41 and the notes thereto, *ante*, p. 227.
(*b*) Security must be given, if demanded.

Quo warranto and *mandamus*.

225. (1) An application for an information in the nature of a *quo warranto* against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election.(*a*)

(2) In the case of such an application, or of an application for a *mandamus* to proceed to an election of a corporate officer,(*b*) the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent)

Sect. 225. Sub-s. 2.

at any time not less than ten days before the day in the notice specified for making the application.

(3) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4) The applicant shall deliver with the notice a copy of the affidavit whereby the application will be supported.

(5) The respondent may show cause in the first instance against the application.

(6) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or *mandamus* absolute.

(7) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8) The court may, if it thinks fit, direct that any writ of *mandamus* issued shall be peremptory in the first instance.

(*a*) It is provided by section 73, *ante*, p. 243, that every municipal election not called in question within twelve months after the election, either by election petition or by *quo warranto*, shall be deemed to have been to all intents a good and valid election. In respect of all or nearly all the grounds upon which an election can be questioned the only remedy, as we have seen by section 87, is election petition. The text deals with disqualification after election, and for this the proper mode of questioning the right to sit and act is by *quo warranto*. The proceedings must be taken within twelve months from the date of the disqualification, though the disqualification may continue to the time of the proceedings; but after the twelve months the person disqualified may be liable to penalties under section 41, *ante*, p. 227. See *Ex parte Birkbeck*, L. R. 9 Q. B. 256. Where an office is full *de facto* the court will not grant a *mandamus* for a new election until the vacancy has been judicially determined by *quo warranto*. *Reg.* v. *Phippen*, 7 A. & E. 966.

(*b*) See *Reg.* v. *Phippen*, *supra*.

Provisions for protection of persons acting under Act.

226. (1) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.(*a*)

(2) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not

recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action. Sect. 226. Sub-s. 2.

(3) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.(*b*)

(*a*) As to actions for penalties in relation to lists and elections, see section 75, *ante*, p. 244. As to actions for fines incurred by corporate officers, see section 224, *ante*, p. 265. The provision in the text is evidently applicable to proceedings other than those under these sections. Under the text notice of action is not necessary, though it is required under section 224.

(*b*) A similar provision is contained in the Local Government Act, section 66, *ante*, p. 109. The text is, however, wider in its operation, as it applies to all officers. See the note on this subject, *ante*, p. 109.

Power for borough constables to take bail.

227. (1) Where a person charged with a petty misdemeanor is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually sitting for the public administration of justice at the justices' room or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognizance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.(*a*)

(2) A recognizance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof as if taken before a justice.(*b*)

(3) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognizance, and of his surety or sureties, if any, with the condition of the recognizance, and the sums acknowledged.(*c*)

(4) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.(*d*)

Sect. 227. Sub-s. 7.

(7) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognizance to such further time as he appoints.

(8) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognizance for his appearance before a justice shall be discharged without fee.

(*a*) This provision is now extended to counties by the Local Government Act, section 75, *ante*, p. 120, and as it is more extensive in its operation than section 38 of the Summary Jurisdiction Act, 1879, it may be taken to supersede that section.

(*b*) The recognizance may be enforced under section 9 of the Summary Jurisdiction Act, 1879.

(*c*) It will now be necessary for county constables to have this book.

(*d*) Sub-sections (5) and (6) are repealed by the Summary Jurisdiction Act, 1884, which substitutes the corresponding provisions of the Summary Jurisdiction Acts. The repealed sub-sections related to the forfeiture and enforcing of the recognizance, as to which see note (*b*), *supra*.

PART XIII.

General.

Boundaries.

Boundaries of boroughs and transfer of parts to counties.

228. (1) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed.

(2) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed.

(3) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodgings, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any

purpose in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed. Sect. 228. Sub-s. 3.

(4) Any gaol, court, depôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

It is provided by the Local Government Act, section 75, sub-section (16), *ante*, p. 124, that nothing in the Municipal Corporations Act, as applied by that section, shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boundaries. Consequently the above section will not apply to counties. For the provisions of the Local Government Act, as to boundaries, see Part III. of that Act, *ante*, p. 88.

Adjustment between boroughs and counties on change of boundaries.

229. If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid; and the rate aforesaid shall continue to be levied by warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it,

Sect. 229. or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

The Local Government Act, section 54, *ante*, p. 92, deals with future alterations of the boundaries of counties and boroughs, and section 62, *ante*, p. 102, provides for the due adjustment of property and liabilities upon any such adjustment. The above section does not apply to counties. See the note to the last section.

Time.

Computation of time.

230. (1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.(*a*)

(2) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.(*b*)

(*a*) Thus, if something is to be done within ten days after the first of a month, the last day for doing it would be the 11th, unless that were Sunday, or one of the days specified, in which case the act would be done on the 12th.

(*b*) This provision will not apply to the nine days' notice of election under section 54, *ante*, p. 235, nor to the seven days mentioned in schedule 3, part 2, rule 7, *post*.

Distance.

Measurement of distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

This is a useful provision, otherwise the Ordnance map could not have been used.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

In applying this section to electoral divisions of counties some modification must be made. No doubt, if there were public offices in the division, the notice might be published there, as by so doing the above section would be satisfied, whether such offices were a town hall within the meaning of this section as applied, or a conspicuous place in the division.

Inspection and Copies.

Inspection of documents.

233. (1) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom.

(2) A burgess may make a copy of or take an extract from an order of the council for the payment of money.(*a*)

(3) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.(*b*)

(5) The Freemen's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7) If a person having the custody of any document in this section mentioned,—

(*a*) Obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

(*b*) Refuses to give copies or extracts to any person entitled to obtain the same under this section.

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

Sect. 233. NOTE. (*a*) Sub-sections (1) and (2) will apply to county councils with the substitution of county elector for burgess.

As to the minutes of the council, see section 22, *ante*, p. 212.

As to orders for the payment of money, see the Local Government Act, section 80, *ante*, p 137.

(*b*) It is provided by the Local Government Act, section 71, *ante*, p. 116, that the provisions of the Municipal Corporations Act, 1882, as to the accounts of the treasurer of a borough and to the inspection and abstract thereof, shall apply to the accounts of a county council.

Fees.

Tables of fees to be posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorised to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

(*a*) The room where the business of the town clerk's office is transacted;

(*b*) The room, if any, where the justices of the borough sit for transacting their business;

(*c*) The room, if any, where the court of quarter sessions of the borough is held; and

(*d*) The room, if any, where the borough civil court is held.

As to the tables of fees to be taken by justices' clerks generally, see 14 & 15 Vict. c. 55; and 40 & 41 Vict. c. 43.

It would appear that this section will now apply in counties except in so far as it refers to the borough civil court. See section 75 of the Local Government Act, *ante*, p. 120.

Seals and Signatures.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a bye-law made under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

As to the authentication of bye-laws, see section 23, *ante*, p. 213. As to the signature of minutes, see section 22, sub-section (5), *ante*, p. 212.

Applications to Treasury.

Nature of application to and corre-

236. (1) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act, notice of the intention to make the application shall

be fixed on the town hall one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection. Sect. 236. SUB-S. 1.

(2) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection. Correspondence with Treasury.

It is provided by the Local Government Act, section 72, *ante*, p. 119, that after the appointed day the Local Government Board shall exercise, as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities, as respects the approval of loans and the alienation of property and other matters therein mentioned, and that part shall, as respects any transactions commenced after the appointed day, be construed as if Local Government Board were throughout that part substituted for Treasury.

The above section will apparently apply to all applications to the Local Government Board, whether by a borough council under this Act, or by a county council under the provisions of the Local Government Act as to property, borrowing, &c.

As to fixing the notice on the town hall, see section 232, *ante*, p. 271.

The town clerk's office will, in counties, be the office of the clerk of the council.

Deputy.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts. Acts of deputy not to be invalidated by defect in appointment.

Overseers.

238. (1) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them. Notices to and acting of overseers.

(2) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

The chief duties of the overseers under this Act as applied by the Local Government Act consist in the preparation of the burgess lists and lists of voters, &c., under Part III., as amended by the County Electors Acts.

Churchwardens are overseers *ex officio* (43 Eliz. c. 2, s. 1), and must be reckoned in ascertaining the majority above referred to. An assistant overseer may also be counted as one of the majority. See *Baker* v. *Locke*, 11 Jur. (N.S.) 65; 34 L. J. C. P. 49; 18 C. B. (N.S.) 52.

Declarations and Oaths.

239. (1) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or Power to administer oaths, &c.

Sect. 239. Sub-s. 1.

other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2) Nothing in this Act in any case shall require or authorise the taking or making of any oath or declaration that would not have been required or authorised under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

31 & 32 Vict. c. 72.

As to the declaration on acceptance of office, see section 35, *ante*, p. 223, and Schedule VIII., *post*. This declaration may be made before two members of the council or the town clerk.

As to the oaths of the chairman of the county council, see the Local Government Act, section 2, *ante*, 4.

Forms.

Forms in schedule.

240. The forms in the Eighth Schedule, or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

The only part of the Eighth Schedule which is incorporated with the Local Government Act is Part I., which is set out, *post*.

Misnomer or Inaccurate Description.

Misnomer or inaccurate description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood.

Where in a voting paper *Gonville Place* was stated as the address of a voter, whereas his real address was *Newmarket Road*, it was held that this inaccuracy was not cured by the corresponding provisions of 5 & 6 Will. 4, c. 76, s. 142. *Reg.* v. *Coward*, 16 Q. B. 819; and see *Reg.* v. *Deighton*, 5 Q. B. 896; 13 L. J. Q. B. 241; 8 Jur. 686; *Reg.* v. *Hammond*, 17 Q. B. 772; 21 L. J. Q. B. 153; 16 Jur. 194; *Reg.* v. *Avery*, 18 Q. B. 576; 21 L. J. Q. B. 153; 17 Jur. 194.

Joseph C., a person entitled to vote at a municipal election, was by mistake entered on the burgess roll as James C. He voted by the name of James C. On motion for a *quo warranto*, the vote was objected to on the ground that C. was not entitled to vote and had fraudulently personated a person entitled to vote. It was held that neither objection was sustained. And, *semble*, that if the objection had been that C. had voted in a wrong name, and was not rightly entered on the burgess roll, this objection could not have been sustained, but that the misnomer would have been cured under 5 & 6 Will. 4, c. 76, s. 142. *Reg.* v. *Thwaites*, 1 E. & B. 704; 22 L. J. Q. B. 238; 17 Jur. 712.

A voting paper signed W. J., of K. street, was rejected on the ground that the qualification of W. J. on the burgess roll was described as "house in M.

street." It was shown by affidavits that K. and M. streets intersected; that the house in question was the corner house; that it was one house, with a street door in each street, consisting of what had formerly been two distinct houses, one in each street, and one of them being the house in M. street. It was held that having regard to 5 & 6 Will. 4, c. 76, s. 142, the description was such as to be commonly understood, and that the vote was improperly rejected. *Reg.* v. *Gregory*, 1 E. & B. 600; 22 L. J. Q. B. 120; 17 Jur. 272. Sect. 241. NOTE.

Voting papers were tendered signed "A. B., voting for property situate in the parish of C." They were rejected, and the rejection altered the majority. In proceedings by *quo warranto*, it was admitted that the borough consisted of two parishes, of which C. was one; that though there were streets and lanes in the borough, the description in the voting papers was such as to be commonly understood, and that the boundaries of the parish were well known and defined. It was held that the fault, if there was one, was cured by 5 & 6 Will. 4, c. 76, s. 142. *Reg.* v. *Spratley*, 6 E. & B. 363; 25 L. J. Q. B. 257; 2 Jur. (N.S.) 735.

A voting paper contained the christian name and surname of the candidate and his place of abode, but no description (such as is required by Schedule 3, Part II., rule 5, *post*). It was held that this was not an inaccurate description, but a total omission of the description of the candidate, and was not cured by 5 & 6 Wm. 4, c. 76, s. 142. *Reg.* v. *Tugwell*, L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; 16 W. R. 1039.

At an election of councillors voting papers designated the person voted for by the initial of his christian name. It was held that this was a misnomer and cured by 5 & 6 Wm. 4 c. 142. *Reg.* v. *Plenty*, L. R. 4 Q. B. 346; 38 L. J. Q. B. 205; 20 L. T. (N.S.) 521; 17 W. R. 792. But in a later case it was held that a similar use of initials in a nomination paper was not cured, for section 142 did not extend to a nomination paper, which was unknown when 5 & 6 Wm. 4, c. 76, was passed. *Mather* v. *Brown*, 1 C. P. D. 596; 45 L. J. C. P. 547; 34 L. T. (N.S.), 869; 24 W. R. 736.

A mistake in the number on the burgess roll as stated in a nomination paper was held not cured by 35 & 36 Vict. c. 33, s. 13, and 41 & 42 Vict. c. 26, s. 41; *Gothard* v. *Clark*, 5 C. P. D. 253; 49 L. J. C. P. 474; 42 L. T. (N.S.) 776; 29 W. R. 102; 44 J. P. 587.

A nomination paper at the election of a town councillor pursuant to the Municipal Corporations Act, 1885, was held sufficiently to state the christian name (William) of the person nominated by the abbreviation Wm. *Henry* v. *Armitage*, 12 Q. B. D. 257; 53 L. J. Q. B. 111; 50 L. T. (N.S.) 4; 32 W. R. 192; 48 J. P. 424.

A nomination paper was subscribed with the full and correct name of Charles Arthur Burman as an assenting burgess; but his name was erroneously entered on the burgess roll as Charles Burman only. It was held that the defect was not cured by the text. The words "commonly understood" mean commonly understood by any person comparing the nomination paper and the burgess roll. *Moorhouse* v. *Linney*, 15 Q. B. D. 273; 53 L. T. (N.S.) 343; 33 W. R. 704; 49 J. P. 471.

Substitution in Former Acts.

Provision for references in unrepealed enactments to 5 & 6 Will. 4, c. 76, &c.

242. (1) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in

Sect. 242. Sub-s. 2.

connection therewith, such provision of this Act as is also mentioned in connection therewith.

(3) Where any Act passed before this Act, and not specified in the first or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

This section has of course no application to the Local Government Act.

Short titles of Acts partly repealed.

243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Returning Officers at Parliamentary Elections.

Mayor of certain boroughs to be returning officer in parliamentary elections.

244. (1) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer.

This section does not apply to counties.

Disfranchised Parliamentary Boroughs.

Electors in disfranchised boroughs. 30 & 31 Vict. c. 102.

245. Where a borough has, in pursuance of the Representation of the People Act, 1867, or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall

in all respects, as regards that purpose, be substituted for the persons so entitled to vote. Sect. 245.

This section cannot apply to a county.

Licensing.

Explanation of terms "town corporate" &c., in Licensing Acts.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licences to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

This section applies only to boroughs.

Freedom of Trading.

Right of free trading in boroughs.

247. Notwithstanding any custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

Bye-laws cannot be made in restraint of trade. See the cases cited in the notes to section 23, *ante*, p. 213.

This section is in fact a proviso to section 23, and will now apply in counties as well as in boroughs.

Cinque Ports.

Special provisions as to certain of the Cinque Ports.

248. (1) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs.

(2) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3) The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

Sect. 248. Sub-s. 4.

(4) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licences or authorities to persons to keep inns, ale-houses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace.

(5) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a separate court of quarter sessions shall be charged by the respective courts of quarter sessions of the five boroughs with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs.

32 & 33 Vict. c. 53.

(7) Nothing in this section shall affect the Cinque Ports Act, 1869, or the Acts therein recited.

The Local Government Act, section 48, sub-section (4), *ante*, p. 86, provides that "the Cinque Ports and two ancient towns and their members shall for all purposes of the county council, and of the powers and duties of quarter sessions and justices out of sessions under this Act, form part of the county in which they are respectively situate, without prejudice, nevertheless, to the position of any such port, town, or member as a quarter sessions borough under the Municipal Corporations Act, 1882, as amended by this Act, and without prejudice to the existing privileges of such ports, towns, and members as respects matters which are not affected by this Act."

Cambridge.

Vice-Chancellor of Cambridge.

249. (1) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough.

(2) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission. Sect. 249. SUB-S. 2.

(3) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

Savings.

250. (1) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice, nevertheless, to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act. Saving for existing corporations.

(2) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorised by law to so collect, and are so collecting, the same.

(4) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

Sect. 250. Sub-s. 5.

(5) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

Compare the provisions of the Local Government Act, section 125, *ante*, p. 190.

Saving for local Acts.

251. Nothing in this Act shall alter the effect of any local Act of Parliament.

The Local Government Act, section 75, sub-section (16), *ante*, p. 124, provides that nothing in the Municipal Corporations Act, 1882, as applied by that section, shall apply the provisions of section 251, *supra*. Section 125 of that Act, *ante*, p. 190, contains a saving for local Acts.

Saving for Prison Acts. 28 & 29 Vict. c. 126. 40 & 41 Vict. c. 21. 13 & 14 Vict. c. 91.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

Saving for military and naval officers, &c.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

See the note to section 34, *ante*, p. 222.

Saving for dockyards, barracks, &c.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

Sect. 256.

256. Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports.

Saving for Lord Warden.

257. Nothing in this Act shall—

Saving for universities.

(1) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or

(2) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively; or

(3) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities; or

(4) Compel any resident members of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or

(5) Authorise the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or

(6) Authorise the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or

(7) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

This section does not apply to counties. See the Local Government Act, section 75, sub-section (16), *ante*, p. 124.

Saving for jurisdiction over cathedral precincts.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

Saving for royal prerogative.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative; and the enabling provisions of this Act shall be

Sect. 259. deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative.

Saving as to repealed enactments.

260. (1) The repeal effected by this Act shall not affect—

(*a*) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or

(*b*) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or

(*c*) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or

(*d*) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or

(*e*) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or

(*f*) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or

(*g*) The terms on which any money has been borrowed before the commencemet of this Act under any enactment repealed by this Act.

(2) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, bye-law, jurisdiction, office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.

(3) All elections, declarations, appointments, bye-laws, rates,

tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done, under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act. Sect. 260. Sub-s. 3.

THE SECOND SCHEDULE.

Meetings and Proceedings of Council.

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

General business is presumably business prescribed by the Act itself or some other Act relating to the council. Any other business must be specified in the summons to attend the meeting. See rule 8, *post*.

County councils must hold quarterly meetings as herein provided.

It may be added, that by the Local Government Act, section 2, *ante*, p. 1, county councils are to conduct their proceedings in like manner as the council of a borough.

2. The quarterly meetings shall be held at noon on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

Noon means 12 o'clock by Greenwich time. 43 & 44 Vict. c. 9.

The quarterly meeting of a county council is to be held on the 7th instead of the 9th November. See the Local Government Act, section 75, sub-section (13), *ante*, p. 124.

The first meeting of a provisional county council will be held on the second Thursday next after the day fixed for the first election. As to the holding of this meeting and the business to be transacted thereat, see the Local Government Act, section 105, *ante*, p. 164.

The first meeting of the county council is to be held on the day appointed for the council coming into office, *i.e.*, on the 1st April, 1889. See the Local Government Act, section 107, sub-section (5), *ante*, p. 168.

In future years after the election of a county council the first business to be done will be the election of the chairman (section 61, *ante*, p. 238); then the election of the aldermen (section 60, *ante*, p. 237).

As to the standing orders, see rule 13, *post*.

3. The mayor may at any time call a meeting of the council.

The chairman of a county council will have this power of calling a meeting of the council at any time.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to

Sched. 2. him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

This rule provides for two cases:—(1) If the mayor (or chairman) signifies his refusal to call a meeting; (2) if he does not refuse, but does not in fact call a meeting within seven days. The seven days are to be reckoned exclusive of Sunday, Christmas Day, Good Friday, Easter Monday or Tuesday, or public fast days. See section 230, *ante*, p. 270.

5. Three clear days at least(*a*) before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall.(*b*) Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.(*c*)

(*a*) This means that three clear days must intervene, not counting either the day of giving the notice or the day of the meeting. *Reg.* v. *Shropshire JJ.*, 8 A. & E. 173; *Young* v. *Higgon*, 6 M. & W. 49.

(*b*) See section 232, *ante*, p. 271. It will probably be a sufficient compliance with this provision if the notice is affixed to the building at which meetings of the county council are usually held.

(*c*) When the meeting is summoned by the mayor the business need not be specified in this notice.

6. Three clear days at least(*a*) before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat,(*b*) and signed by the town clerk,(*c*) shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

(*a*) See rule 5, note (*a*), *supra*.

(*b*) This notice must in every case specify the business.

(*c*) The clerk of the council must sign the summons calling a meeting of the county council.

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

This rule is evidently intended to obviate any difficulty which might arise in case of the accidental omission of notice to any member. But it may be doubted whether the failure to send notices to a considerable number of members might not affect the validity of the meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

A quarterly meeting may be adjourned to complete unfinished business, and in such cases no summons may be necessary; but no fresh business which may casually arise can be transacted at this adjourned meeting unless notice and summons have been issued as required by the preceding rules. *Reg.* v. *Grimshaw*, 10 Q. B. 747; 16 L. J. Q. B. 385; 11 Jur. 965.

As to the quarterly meetings, see the note to rule 1, *ante*, p. 283.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the

deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman. Sched. 2.

In county councils the chairman or vice-chairman will preside. In the event of their absence the councillors present must elect an alderman, or if there is no alderman present, a councillor, to preside.

See the note to section 16, *ante*, p. 210, as to the vice-chairman.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one-third of the number of the whole council.

The majority will be determined by the members voting, though others may be present and do not vote.

The quorum of a county council is to be one-fourth, instead of one-third. See the Local Government Act, section 75, sub-section (15), *ante*, p. 124.

A quorum of two-thirds is required under section 23, *ante*, p. 213.

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

A difficulty might arise if the chairman were disqualified from voting by reason of his having a pecuniary interest in the subject of discussion. See section 22, sub-section (3), *ante*, p. 212. In such a case he could not, apparently, give an original or a casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorised by this Act.

As to the signature and authentication of the minutes, see section 22, sub-section (5), *ante*, p. 212.

As to forging the signature to any minutes, see section 235, *ante*, p. 271.

13. Subject to the foregoing provisions of this schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

It is anticipated that county councils will make standing orders similar to those of quarter sessions.

THE THIRD SCHEDULE.

Part II.

Rules as to Nomination in Elections of Councillors.

1. Every candidate for the office of councillor must be nominated in writing.

2. The writing must be subscribed by two burgesses of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

The burgesses must be enrolled in the burgess roll or ward roll, as the case may be. See section 51, *ante*, p. 233.

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This will apply to an election of county councillors, so as to render it necessary that the proposer, seconder, and persons assenting should be county electors for the electoral division.

A burgess was nominated in a paper signed by B. and H., as proposer and seconder, and by eight other assenting burgesses. After the nomination paper had been delivered to the town clerk it was altered in the absence of the seconder and assenting burgesses by striking out the name of B. as proposer and substituting that of G., another burgess. It was held that the nomination was invalid. *Harmon* v. *Park*, 7 Q. B. D. 369; 50 L. J. Q. B. 775; 45 L. T. (N.S.) 174; 45 J. P. 714.

The form of the nomination paper prescribed by this Act is contained in Schedule 8, Part 2, which is not incorporated with the Local Government Act. Whether, having regard to section 240, the form prescribed will apply to county councillors is not quite clear, but it will be advisable to follow it. Of the numerous cases decided on the form of the nomination paper reference may be made to *Moorhouse* v. *Linney*, 15 Q. B. D. 273; 53 L. T. (N.S.) 343; 33 W. R. 704; 49 J. P. 471; *Gothard* v. *Clarke*, 5 C. P. D. 253; 49 L. J. Q. B. 474; 42 L. T. (N.S.) 776; 29 W. R. 102; and the cases cited in the notes to section 241, *ante*, p. 274.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more.

Where there were four vacancies, and a burgess subscribed four nomination papers which were delivered in time, and afterwards a fifth, which was also delivered in time, it was held that the first four were valid. *Burgoyne* v. *Collins*, 51 L. J. Q. B. 335; 30 W. R. 923; 46 J. P. 390. See, however, rule 10, which is apparently inconsistent with this rule.

This rule will not apply to elections of county councillors, as there can never be more than one vacancy in an electoral division. See the Local Government Act, section 2, *ante*, p. 2.

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made.

As to the non-resident list, see the notes to section 49, *ante*, p. 232.

The candidate must be enrolled and entitled to be enrolled. See *Flintham* v. *Roxburgh*, *ante*, p. 205.

5. The nomination paper must state the surname and other names of the candidate, with his abode and description.

The initials of the christian names of the candidates are not sufficient. *Mather* v. *Brown*, *ante*, p. 275.

But an abbreviation, such as Wm. for William, is sufficient. *Henry* v. *Armitage*, 12 Q. B. D. 257; 53 L. J. Q. B. 111; 50 L. T. (N.S.) 4; 32 W. R. 192; 48 J. P. 424.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

This duty will in counties devolve upon the returning officer. See the Local Government Act, section 75, sub-section (5), *ante*, p. 121.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder, at the town clerk's office, seven days at least before the day of election, and before five o'clock in the afternoon of the last day for delivery of nomination papers.

It is provided by the Local Government Act, section 75, sub-section (7), *ante*, p. 122, that some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town clerk's office, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division.

The nomination paper must be delivered to the town clerk (or returning officer) by the candidate himself, or by his proposer or seconder personally, and not by an agent. And the objection is one which is cognisable by the mayor (or returning officer) under rule 9, *post*, whose decision allowing it may be questioned on a petition against the return of the successful candidate. *Monks* v. *Jackson*, 1 C. P. D. 683; 46 L. J. Q. B. 162; 35 L. T. (N.S.) 95; 41 J. P. 231.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

This duty will in elections of county councillors devolve upon the returning officer. See the Local Government Act, section 75, sub-section (5), *ante*, p. 122.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper.

This duty will devolve upon the returning officer in elections of county councillors. See the Local Government Act, section 75, sub-section (4), *ante*, p. 121. By the same section, sub-section (7), some place fixed by the returning officer shall, except where the election is in a borough, be substituted for the town hall, but such place shall, if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall be in the electoral division or in an adjoining electoral division. By sub-section (16) (*g*) of the same section, *ante*, p. 125, schools and public rooms may be used free of charge for hearing objections to nomination papers.

As the returning officer will hardly be able himself to perform the above duty in every electoral division, he must in many cases entrust it to his deputies, as he may under the Local Government Act, section 75, sub-section (3), *ante*, p. 121.

As to his power to revise the decisions of his deputies, see sub-section (6) of the same section, and the note to section 53 of this Act, *ante*, p. 234.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered.

See the note to rule 3, *supra*.

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock in the afternoon of the last day for delivery of nomination papers.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this

Sched. 3.

schedule, object to the nomination paper of any other candidate for the borough or ward.

The time appointed is between two and four in the afternoon. See rule 9, *ante*, p. 287.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return.

The mayor (or returning officer) has no power to deal with an objection as to the time of delivering the nomination papers, and if he does so his decision may be questioned on petition. *Howes* v. *Turner*, 1 C. P. D. 670; 45 L. J. Q. B. 550; 35 L. T. (N.S.) 58; 40 J. P. 680.

The mayor may properly deal with an objection that a nomination paper has not been delivered by the candidate or his proposer or seconder personally, as required by rule 7, *ante*, p. 286. *Monks* v. *Jackson*, 1 C. P. D. 683; 46 L. J. Q. B. 162; 35 L. T. (N.S.) 95; 41 J. P. 231.

Where the mayor *bonâ fide* decides an objection, he cannot be made respondent to an election petition questioning the election on the ground of such decision. *Harmon* v. *Park*, 6 Q. B. D. 323; 45 J. P. 436.

An objection that the nominations of four persons were bad on the ground that one of the assenting burgesses had subscribed five nomination papers ought not to be entertained by the mayor. *Burgoyne* v. *Collins*, 30 W. R. 923; 46 J. P. 390.

15. The town clerk shall, at least four days before the day of election, cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

This duty, in elections of county councillors, will devolve upon the returning officer. See the Local Government Act, section 75, sub-section (5), *ante*, p. 122. As to the substitution of a place for the town hall, see the same Act, section 75, sub-section (9), *ante*, p. 122.

The day of publishing the names under this rule is to be deemed the day of nomination (see the Local Government Act, section 100, *ante*, p. 160); and the period between this day and the day of election is to be such period, not exceeding six days, as the returning officer may fix (*ib.*, section 75, sub-section (9), *ante*, p. 123).

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

As to the nomination of a person without his consent, see the Local Government Act, section 75, sub-sections (16) (*c*), *ante*, p. 125.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notice shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which

will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll, although that roll is not yet completed. Sched. 3.

The provisions of this Act relating to proceedings preliminary to elections are contained in Part III., *ante*.

Burgess roll and ward roll must be read as including roll of county electors and division register for the purposes of county elections.

Part III.

Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

The provisions of the Ballot Act, 1872, as to the use of a room for taking the poll are contained in section 6. By the Local Government Act, section 75, sub-section (16) (*g*), *ante*, p. 125, the above provision is not to prevent the use of schools and public rooms for taking the poll and hearing objections to nomination papers at elections of county councillors.

The right of the returning officer to vote is given by section 58, sub-section (5), *ante*, p. 236.

The title to vote is regulated by section 51, *ante*, 233.

2. The mayor shall, at least four days before the day of election, give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

This duty will devolve on the returning officer at elections of county councillors. See the Local Government Act, section 75, sub-section (4), *ante*, p. 121. As to this duty at the first election, see section 103 of that Act, *ante*, p. 160.

3. The mayor shall provide everything which, in the case of a parliamentary election, is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

This duty will devolve on the returning officer at elections of county councillors. See the Local Government Act, section 75, sub-section (4), *ante*, p. 121.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers as, in the judgment of the mayor, may be necessary for effectually taking the poll at the election.

See the note to the preceding rule.

5. All expenses of the election shall be defrayed in manner by this Act provided.

As to the expenses of the elections of county councillors, see the Local Government Act, section 75, sub-sections (16) to (19), *ante*, p. 126.

6. No return shall be made to the Clerk of the Crown in Chancery.

Sched. 8.

THE EIGHTH SCHEDULE.

Forms.

Part I.—Declarations on Accepting Office.

Form A.

Form of Declaration on Acceptance of Corporate Office.

I, *A.B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

Form B.

Declaration by Recorder or Borough Justice.

I, *A.B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of according to the best of my judgment and ability.

Form A. is the form of declaration which must be made by county councillors under sections 35, 41, *ante*.

Form B. does not appear to have any application to counties.

THE MUNICIPAL ELECTIONS (CORRUPT PRACTICES) ACT, 1884.

(47 & 48 VICT. CAP. 70.)

An Act for the better prevention of Corrupt and Illegal Practices at Municipal and other Elections.

[14th August, 1884.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say):

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

This Act is incorporated with the Local Government Act. See section 75 of that Act, *ante*, p. 120. It is, in so far as relates to election petitions, supplemental to Part IV. of the Municipal Corporations Act, 1882, which has been already set out.

Corrupt Practices.

Definition and punishment of corrupt practice municipal election.

2. (1) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.(*a*)

(2) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.(*b*)

(*a*) See Schedule 3, Part I., *post*.

(*b*) By the Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51, s. 6), corrupt practices other than personation or aiding, &c., in the commission of personation, are declared to be misdemeanors, and any person convicted of any of them is liable to be imprisoned, with or without hard labour, for a term not exceeding two years, or to be fined any sum not exceeding 200*l*. A person who commits the offence of personation or of aiding, &c., the commission of that offence is guilty of felony, and liable on conviction to be imprisoned,

Sect. 2. NOTE.

with or without hard labour, for a period not exceeding two years. In addition to these punishments, a person who is convicted on indictment of any corrupt practices shall not be capable for a period of seven years from the date of his conviction of being registered as an elector or voting at any election in the United Kingdom, whether it be a parliamentary election or an election for any public office (see *infra*); or of holding any public or judicial office (see *infra*), and if he holds any such office the office shall be vacated. Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time of such conviction. By section 64 the expression "public office" means any office under the Crown or under the charter of a city or municipal borough, or under the Acts relating to municipal corporations, or to the poor law or under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), or under the Public Health Act, 1875 (38 & 39 Vict. c. 55), or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office to which a person is elected and appointed under any such charter or Act as above-mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly.

The expression "judicial office" includes the office of justice of the peace and revising barrister.

As to the form of indictment for corrupt practices, see *Reg.* v. *Stroulger*, 17 Q. B. D. 327; 55 L. J. M. C. 137; 55 L. T. (N.S.) 122; 34 W. R. 719; *Reg.* v. *Norton*, 16 Cox C. C. 59.

Each act of bribery is a distinct offence, for which separate penalties are incurred. *Milnes* v. *Bale*, 39 J.P. 743.

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

3. (1) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough,(*a*) it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882,(*b*) that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough(*c*) and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.(*d*)

(2) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is

made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough,(*c*) during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Sect. 3. Sub-s. 2.

(*a*) This will now include an election of a county councillor.
(*b*) See this section, *ante*, p. 251.
(*c*) This will apply so as to disqualify a candidate to be elected as county councillor for his county.
(*d*) For these incapacities, see the note to the last section.

Illegal Practices.

4. (1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

Certain expenditure to be illegal practice.

(*a*) On account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise ; or

(*b*) To an elector, on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice ; or

(*c*) On account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough, one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors over and above the said two thousand.(*a*)

(2) Subject to such exception as may be allowed in pursuance of this Act(*aa*), if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person(*b*) receiving such payment or being a party to any such contract, knowing the

Sect. 4. Sub-s. 2.

same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

(*a*) This provision will apply to an election of a county councillor, as if the division in which the election takes place were the ward of a borough.

(*aa*) See sections 19—21, *post*.

(*b*) The word *person* is here presumed to mean *elector* in cases falling within sub-section (1) (*b*), as it does not appear to be illegal to make payments such as those mentioned in that clause to a person other than an elector. And see sub-section (3).

Expense in excess of maximum to be illegal practice.

5. (1) Subject to such exception as may be allowed in pursuance of this Act,(*a*) no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following; (that is to say,)

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors.(*b*)

(2) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.(*c*)

(4) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election: Provided that—

(*a*) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual,

or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(*b*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(*c*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act, which would otherwise make an Act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses.(*d*)

(*a*) See sections 19—21, *post*.
(*b*) This will apply to an election of a county councillor, as if the word *ward* meant an electoral division.
(*c*) As only one county councillor is to be elected for each division, the provisions of this section as to joint candidates are inapplicable to elections of county councillors.
(*d*) See sections 19—21, *post*.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

6. (1) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.(*a*)

(2) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

(*a*) As to persons prohibited from voting by this Act, see sections 22, 23, and Schedule 3, Part II., *post*.
(*b*) But *quære* whether the election would not be avoided by the commission of such an offence by an agent. See section 8 (2), *post*.

Sect. 7.

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election,(*a*) shall on summary conviction be liable to a fine not exceeding one hundred pounds, and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office(*b*) within the meaning of this Act) held for or within the borough(*c*) in which the illegal practice has been committed.

(*a*) This will include an election of a county councillor.
(*b*) As to what is a public office, see section 34, *post*, and the notes to section 2, *ante*.
(*c*) This word includes county in the application of the section to elections of county councillors.

Incapacity of candidates reported guilty of illegal practice. 45 & 46 Vict. c. 50.

8. (1) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882,(*a*) and a petition alleging such illegal practice may be presented and tried accordingly.

(2) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough(*b*) in which a charge is made of any illegal practice having been committed in reference to such election, the election court(*c*) shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough(*d*) during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.(*e*)

(*a*) See this part, *ante*, p. 245.
(*b*) This includes an election for an electoral division of a county.
(*c*) As to the election court, see section 92 of the Municipal Corporations Act, 1882, *ante*, p. 250.
(*d*) See section 3, note (*d*), *ante*, p. 293.
(*e*) See section 7, *ante*.

Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act,(*a*)

or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception,(*b*) such person shall be guilty of illegal payment.(*c*)

Or payment to be illegal payment.

(*a*) See section 5, *ante*, p. 294.

(*b*) See sections 19—21, *post*.

(*c*) Money paid for the employment of persons to keep order at meetings is an illegal employment. *Packard* v. *Collings*, 54 L. T. (N.S.) 619.

Gratuitous refreshments to workers renders their employment illegal within the meaning of this section. *Barrow Election Petition*, *Ib.* 618.

10. (1) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election,(*a*) any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

Employment of hackney carriages, or of carriages and horses kept for hire.

(2) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

(*a*) This includes the election of a county councillor.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election,(*a*) in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement, shall also be guilty of illegal payment.

Corrupt withdrawal from a candidature.

(*a*) This includes an election of a county councillor.

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Certain expenditure to be illegal payment.

12. (1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election,(*a*) be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract, or receiving such payment, shall also be guilty of illegal payment if he knew that the same was made contrary to law.

(*a*) This includes an election of a county councillor.

Certain employment to be illegal.

13. (1) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election,(*a*) be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

(*a*) A number of persons may be employed, not exceeding two for a borough or ward,(*b*) and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(*b*) One polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(3) A person legally employed for payment under this section may or may not be an elector, but may not vote.

(*a*) This includes an election of a county councillor.

(*b*) In applying this section to the election of a county councillor, "electoral division" must be substituted for "ward." Sect. 13. NOTE.

(*c*) This appears to be intended to meet the case of a person who contracts for the purposes of the election, *e.g.*, for printing. The employés of such persons are not to be deemed to be employed within the meaning of this section.

14. Every bill, placard, or poster having reference to a municipal election(*a*) shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice,(*b*) and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.(*c*) Name and address of printer on placards.

(*a*) This includes an election of a county councillor.

(*b*) As to the punishment of an illegal practice, see section 7, *ante*, p. 296.

(*c*) The appellant was a candidate for a seat in a local board. The respondent received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by the appellant, but having no printer's name thereon. This document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him. The printer debited the appellant with the cost of printing, but was not paid. It was held on these facts that there was no evidence that the appellant had "printed or caused to be printed" the document in question. Placards or posters, also without the printer's name and address, printed by the instructions of one E., who was advertsied in a local newspaper as chairman of a committee for promoting the election of the appellant, and who sent the copy to the printer, were proved to have been posted about the district at E.'s expense. The court doubted whether this was evidence of the printing and posting by an agent of the appellant; but the justices having convicted the appellant in one penalty for both offences, and the conviction being bad as to the first—*Held*, that it was bad altogether. *Bettesworth* v. *Allingham*, 16 Q. B. D. 44; 34 W. R. 296; 50 J. P. 55.

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act. Saving for creditors.

See sections 9—13, *ante*.

In the case of an expense incurred in contravention of the Act, the illegality of the expense will be no defence to an action by a creditor who when the expense was incurred was ignorant of its being in contravention of the Act. This provision is necessary for the protection of creditors who have no means of knowing what other expenses have been incurred by a candidate.

16. (1) (*a*) Any premises which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on Use of certain premises for

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committee rooms or meetings to be illegal hiring.

which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises ; or

(*b*) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

Shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election,(*a*) be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

(*a*) This includes an election of a county councillor.

Punishment of illegal payment, employment, or hiring.

17. (1) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.(*a*)

(*a*) The offence will, therefore, be punishable under section 7, *ante*, p. 296.

Avoidance of election for extensive illegal practices, &c.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough(*a*) it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve,

or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.(*b*) Sect. 18.

(*a*) This includes an election of a county councillor for an electoral division of a county.
(*b*) This phrase includes the office of county councillor in the said county.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

19. Where upon the trial of an election petition respecting a municipal election,(*a*) the election court(*b*) reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences,(*c*) in reference to such election, and the election court further report that the candidate has proved to the court— Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

(*a*) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(*b*) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(*c*) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(*d*) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

(*a*) This includes the election of a county councillor.
(*b*) As to the election court, see section 92 of the Municipal Corporations Act, 1882, *ante*, p. 250.
(*c*) Observe that this does not include corrupt practices.

20. Where, on application made, it is shown to the High Court or to a municipal election court,(*a*) by such evidence as seems to the Court sufficient— Power of High Court and election court to except innocent act from

(*a*) That any act or omission of a candidate at a municipal election for a borough or ward of a borough,(*b*) or of any agent or other person, would, by reason of being in

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being illegal practice, &c.

contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring;(*c*) and

(*b*) That such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(*c*) That such notice of the application has been given in the said borough as to the Court seems fit;

and under the circumstances it seems to the Court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.(*d*)

(*a*) As to this court, see section 92 of the Municipal Corporations Act, 1882, *ante*, p. 250.

(*b*) This will apply to a candidate at an election of county councillors.

(*c*) Observe that corrupt practices are not mentioned here.

(*d*) In order to support an application under this section, it will not be sufficient that notice of intention to make the application has been advertised in the local papers, but such notice should be published in such a manner as will ensure a reasonable certainty that persons interested had notice; and it will also be insufficient, in the affidavits upon which the application is made, merely to state that the Act in respect of which relief is sought arose from inadvertence, and not from any want of good faith, without showing some reasonable excuse for such inadvertence. *Ex parte Perry*, 48 J. P. 824. For a case where an order was granted in respect of an omission to issue placards without the printer's name, see *Ex parte Clark*, 52 L. T. (N.S.) 260. For another case where a room had been used in a club contrary to section 16, see *Ex parte Terry*, Times Reports, vol. i. p. 183.

For a case where a candidate was allowed to make payments after the expiration of the proper time, see South Shropshire Election, Times Reports, vol. ii. p. 347; *Ipswich Election Petition*, Times Reports, vol. iii. p. 397. For a case where a candidate was allowed to make the return and declaration prescribed by the next section after the prescribed time, see *Ex parte Robson*, *post*.

Where a person voted and afterwards accepted payment for services rendered as an agent the court refused to relieve him from the consequences. *Re Essex (South West Division) Election*, Times Reports, vol. ii. p. 388.

In *Ex parte Matthews*, Times Reports, vol. ii. p. 548, the court granted relief to a candidate who had acted as his own agent and had through ignorance omitted to make a return of his expenses, but the court intimated that in future candidates must make themselves better acquainted with the law.

Where a person had obtained a certificate of indemnity for a late return of his expenses, and subsequently on the same day (but after the order had been drawn up), a voter appeared to oppose the granting of such certificate, it was

held that the application of the voter must be dismissed in the absence of any sufficient explanation of his delay. *Wigan Election*, Times Reports, vol. ii. p. 159. Sect. 20. NOTE.

If the application is made by a person against whom a petition is pending, the court will order the application to stand over till after the trial of the petition. *Ex parte Willes*, 15 Q. B. D. 114; 55 L. J. Q. B. 576; 34 W. R. 273; 50 J. P. 487.

Sending in claims and making payments for election expenses

21. (1) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor(*a*) on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election,(*b*) and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice,(*c*) but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3) Within twenty-eight days after the day of election of a councillor(*d*) every candidate at such election shall send to the town clerk(*e*) a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompained by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.(*e*)

(4) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses) or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty

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pounds for every day on which he so sits or votes to any person who sues for the same.(*f*)

(5) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice,(*c*) and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.(*g*)

(6) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.(*h*)

(8) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10) The return and declaration sent in pursuance of this Act to the town clerk(*i*) shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received

by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words. Sect. 21. Sub-s. 10.

(11) After the expiration of the said twelve months the town clerk(*i*) may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

(*a*) This will include the election of a county councillor.

(*b*) Money paid by an agent of a candidate for the employment of persons to keep order at meetings is within this provision. *Packard* v. *Collings*, 54 L. T. (N.S.) 619.

(*c*) And therefore punishable under section 7, *ante*.

(*d*) In elections of county councillors this return must be sent to the clerk of the county council. See the Local Government Act, section 75, sub-section (5), *ante*, p. 122.

(*e*) This return and declaration must be made, although no expenses have actually been incurred by the candidate. But the Court will, on satisfactory proof that the omission happened under such circumstances as to amount to an authorised excuse under the Act, make an order that the return and declaration be made notwithstanding the lapse of the prescribed period for making them. *Ex parte Robson*, 18 Q. B. D. 336 ; 55 L. T. (N.S.) 813 ; 35 W. R. 290 ; 51 J. P. 199.

(*f*) Observe that any person may sue. The Crown cannot remit the penalties. See *Todd* v. *Robinson*, 12 Q. B. D. 530 ; 53 L. J. Q. B. 251 ; 50 L. T. (N.S.) 298 ; 32 W. R. 858 ; 48 J. P. 692.

(*g*) See section 2, *ante*.

(*h*) See the cases cited in the notes to the last section; also *Ex parte Robson*, *supra*. Where a claim was disputed and afterwards decided against the candidate, leave was given to pay it in. *Re Lowestoft Election*, Times Reports, vol. iv. p. 38.

(*i*) Notice of application to the Court must be given to the other candidates, to the returning officer, and to the public by advertisements. *Re Ludlow Election*, 54 L. T. (N.S.) 129 ; 34 W. R. 352.

An application for leave to pay the hire of a brougham used without authority by the clerk of a candidate was refused in *Re Chelsea Election* ; Times Reports, vol. ii. p. 374.

Disqualification of Electors.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny. Prohibition of persons guilty of offences from voting.

This will apply to elections of county councillors.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part II. of the Third Schedule to this Act, shall apply as part of this Act. Application of ss. 37 & 38 of 46 & 47 Vict. c. 51.

See the schedule, *post*.

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List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

24. (1) The town clerk in every municipal borough(*a*) shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.(*b*)

(2) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office)(*c*) was held in the said borough or in the county in which such borough is situate.

(3) The town clerk of any municipal borough(*a*) shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough,(*b*) send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5) The revising authority(*c*) shall determine such claims and objections and shall revise such list in like manner, as nearly as

circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors. Sect. 24. Sub-s. 5.

(6) Where it appears to the revising authority(*e*) that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7) A revising authority(*e*) in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8) The corrupt and illegal practices list shall be appended to the burgess roll,(*f*) and shall be printed and published therewith wherever the same is printed or published.

(9) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned.(*g*) 45 & 46 Vict. c. 50.

(*a*) In counties this duty will devolve on the clerk of the county council.
(*b*) The terms used in this section must be modified to make them applicable to elections of county councillors. Thus county electors must be substituted for burgesses, electoral division for ward, &c.
(*c*) See the note to section 2, *ante*.
(*d*) The day here referred to is the 1st August. The term parish burgess lists will include lists of county electors. See note (*b*), *supra*.
(*e*) That is, the revising barrister. See the County Electors Act, 1888, 51 Vict. c. 10, s. 4.
(*f*) The term burgess roll includes roll of county electors.
(*g*) See the section here referred to, *ante*.

Proceedings on Election Petitions.

25. (1) A municipal election petition(*a*) complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make Petition for illegal practice.

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the return and declaration then within the like time after the date of the allowance of the excuse.(*b*)

Time for presentation of petition alleging illegal practices.

(2) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

45 & 46 Vict. c. 50.

(3) Any election petition presented within the time limited by the Municipal Corporations Act, 1882,(*c*) may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.

(4) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

(*a*) This includes a petition against the return of a county councillor.
(*b*) As to this return and declaration, see section 21, sub-sections (3), (9), *ante*.
(*c*) As to the time for presentation of a petition alleging corrupt practices, see section 88, sub-section (4), of the Municipal Corporations Act, 1882, *ante*.

Withdrawal of election petition.

26. (1) Before leave for the withdrawal(*a*) of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition ; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4) If any person makes any agreement or terms, or enters into

any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions(*b*) a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative, may consider material.

(6) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882,(*c*) where the withdrawal is induced by a corrupt consideration. 45 & 46 Vict. c. 50.

(7) In every case of the withdrawal of an election petition, by leave of the election court(*d*) such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

(*a*) As to the procedure for withdrawal of a petition, see section 95 of the Municipal Corporations Act, 1882, *ante*.

(*b*) The Solicitor to the Treasury is now the Director of Public Prosecutions, 47 & 48 Vict. c. 58.

(*c*) See sub-section (4) of the section referred to, *ante*.

(*d*) See section 92 of the Municipal Corporations Act, 1882, *ante*.

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Continuation of trial of election petition.

27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

As to the adjournment of the trial, see section 93 (11) of the Municipal Corporations Act, 1882.

Attendance of Director of Public Prosecutions on trial of election petition, and prosecution by him of offenders.

28. (1) On every trial of a municipal election petition(*a*) the Director of Public Prosecutions(*b*) shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court(*c*) with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity(*d*) and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act,(*e*) upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:(*f*)

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury. Sect. 28. Sub-s. 4.

(5) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named,

(6) Upon such order being made,

(*a*) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(*b*) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(*c*) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882.(*g*) 45 & 46 Vict. c. 50.

Sect. 28. Sub-s. 8.

(8) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years' standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9) The expenses incurred in defraying the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.(*h*)

45 & 46 Vict. c. 50.

(*a*) This includes an election of county councillors.

(*b*) The Solicitor to the Treasury is now the Director of Public Prosecutions.

(*c*) As to the court, see section 92 of the Municipal Corporations Act, 1882, *ante*.

(*d*) See as to this certificate section 94 (5) of the Municipal Corporations Act, 1882, *ante*, and section 30, *post*.

(*e*) See sections 2, 7, *ante*.

(*f*) See section 7, *ante*.

(*g*) See this sub-section, *ante*.

(*h*) If a petition is utterly unfounded the petitioner may be ordered to pay the costs of the Director of Public Prosecutions. *Kennington Election Petition*, 54 L. T. (N.S.) 628. This section applies only to the trial of a petition. The costs of the Public Prosecutor cannot be ordered where the petition is withdrawn. *Devonport Election Petition*, 54 L. T. (N.S.) 733; 50 J. P. 135.

Power to election court to order payment by borough or individual of costs of election petition.

29. (1) Where upon the trial of a municipal election petition(*a*) it appears to the election court(*b*) that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right, as follows:

(*a*) If it appears to the court that corrupt practices extensively

prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough ;(*c*) and Sect. 29. Sub-s. 1.

(*b*) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct.

(3) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause, or matter in the High Court on the higher scale, as between solicitor and client.(*d*) 45 & 46 Vict. c. 50.

(*a*) This includes a petition against the return of a county councillor.
(*b*) See section 92 of the Municipal Corporations Act, 1882, *ante*.
(*c*) The word *borough* will include *county* when this section is applied to an election of county councillors. See *Reg.* v. *Maidenhead* (*Mayor of*), cited in the notes to the Municipal Corporations Act, 1882, section 101, *ante*. As to the fund out of which this payment is to be made, see section 32, *post*.
(*d*) As to the taxation of costs, see rule 68, *post*.

Miscellaneous.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt and illegal practice or any illegal payment, employment, or hiring committed in reference to a muni- General provisions as to pro-

Sect. 30. cipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of public prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions:(*a*)—

Prosecution of offences under this Act.

46 & 47 Vict. c. 51.

(*a*) Where the Director of Public Prosecutions(*b*) considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough,(*c*) he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

45 & 46 Vict. c. 50.

(*b*) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections:(*c*)

s. 94 (7)

(*c*) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

(*a*) Section 45 requires the Director of Public Prosecutions (now the Solicitor to the Treasury, 47 & 48 Vict. c. 58) to inquire into alleged corrupt or illegal practices; section 46 provides for the removal of incapacity on the ground that it was procured by perjury; sections 50—57 relate to legal proceedings; section 59 relates to the obligation of a witness to answer and the certificate of indemnity; and section 60 provides for the submission of the report of an election court to the Attorney-General.

(*b*) See 47 & 48 Vict. c. 58, cited in the preceding note.

(*c*) This will include an election of a county councillor.

(*d*) That is, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can be made. 46 & 47 Vict. c. 51, s. 56.

Person incapacitated by

31. If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected

to or holding any public or judicial office,(*a*) and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date. Sect. 31. conviction or report to vacate seat or office.

(*a*) See the note to section 2, *ante*, p. 291.

32. (1) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough,(*a*) such costs shall be paid out of the borough fund or borough rate.(*b*) Payment and recovery of costs.

(2) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

(*a*) See section 29, *ante*, p. 312.
(*b*) With reference to elections of county councillors, this must be read as county fund or county rate.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough,(*a*) whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough,(*b*) or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office. Service of notices.

(*a*) This will apply to an election of a county councillor in an electoral division.
(*b*) *Borough* must be read as *county* with reference to an election of a county councillor.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," Definitions. 15 & 16 Vict. c. 50.

Sect. 34. "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.(*a*)

46 & 47 Vict. c. 51.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.(*b*)

(*a*) As applied to elections of county councillors, the word election will include an election for an electoral division.

(*b*) The division register corresponds to the burgess roll in boroughs.

Application to city of London of Act and of Part IV. of 45 & 46 Vict. c. 50.

35. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the city of London, subject as follows:—

(1) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city:

(2) The expression "burgess" means, in relation to each municipal election, any person entitled to vote at such election:

(3) Any costs or expenses directed to be paid out of the borough fund or borough rate shall, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case shall be paid by the chamberlain of the said city out of the city's cash:

30 Vict. c. 1.

(4) The enactments relating to personation, polling agents, and disclosure of votes shall not apply, save that if any person commits any offence under the City of London Municipal Elections Amendment Act, 1867, in relation to the declaration required by that Act to be made at the poll, he shall, in addition, be deemed guilty of a corrupt practice under this Act:

(5) A vacancy in any office created by the decision of an election

court shall be filled by a new election, and every summoning officer is hereby authorised and required to summon the electors for such election: Sect. 35. Sub-s. 5.

(6) In the case of an election of an alderman and common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by this Act for the election of a councillor:

(7) In the case of an election by liverymen in common hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding forty pounds, and, if a poll be demanded, then not exceeding two hundred and fifty pounds, and, in the event of a poll being demanded, such poll shall take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll shall take place on the fourth day, and the poll shall last for one day only, and commence at the hour of eight in the morning and close at six in the evening:

(8) The town clerk shall send the corrupt and illegal practices list, when made out by him, to the ward clerk of each ward, not less than fourteen days before the day on which the list of persons entitled to vote in such ward is required to be made out, and the aldermen and common councilmen of each ward shall omit from such last-mentioned list the names of all persons mentioned in the corrupt and illegal practices list, and the corrupt and illegal practices list shall be printed and appended to every copy of the list of persons entitled to vote in such ward.

35. * * *

This section applies to municipal elections in the city of London, and has no bearing on the election of county councillors.

Application of Act to other Elections.

Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections.

36. (1) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to elections for the offices mentioned in the first column of the First Schedule to this Act as if re-enacted herein, and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Sect. 36. Sub-s. 1.

Provided that in the application of the said provisions to any such election:

(*a*) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(*b*) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union, and "a municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(*c*) No corrupt and illegal practices list shall be made for any such election.

(*d*) Vacancies created by the decision of an election court shall be filled by a new election.

(*e*) A petition relating to the election of a guardian of the union may be tried at any place within the union.

(*f*) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district or in the metropolis;

(*g*) Where the poll at any election to an office in the said schedule is taken by means of voting papers, such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall not apply; but any offence in relation to voting papers or to personation or to voting at such election, which is punishable on summary conviction (that is to say), the offences mentioned in section three of the Poor Law Amendment Act, 1851, and in rule sixty-nine of Schedule Two to the Public Health Act, 1875, shall, without prejudice to the punishment under such section and rule of a person guilty of such offence, be deemed to be an illegal practice within the meaning of the said provisions.

14 & 15 Vict. c. 105
38 & 39 Vict. c. 55.

(*h*) The Local Government Board shall have the same power as heretofore under section eight of the Poor Law Amend-

5 & 6 Vict. c. 57.

ment Act, 1842, to determine any question arising as to the right of a person to act as guardian, except that the Board shall not have power— Sect. 36. Sub-s. 1.

(a) To determine, until after the expiration of twenty-one days after the election of a person as guardian, any question which can be determined upon an election petition under this section; nor

(b) To determine any question which is raised by an election petition under this section, and is either awaiting decision or has been decided by an election court; nor

(c) To determine any question of general corruption, or of any corrupt or illegal practice, except so far as appears to such Board necessary for determining the validity of any vote.

(2) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

This section has no application to elections of county councillors, with the exception of sub-section (2), which is substituted for a repealed provision in section 92 of the Municipal Corporations Act, 1882, *ante*.

37. The provisions of this Act, which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act. Exemption from provisions as to maximum expenses.

This section does not apply to elections of county councillors.

Repeal.

38. The Acts specified in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, but such repeal shall not affect anything duly done or suffered, or any right acquired Repeal of Acts.

Sect. 38. or accrued, or any incapacity incurred, before the commencement of this Act; and any person subject to any incapacity under any enactment hereby repealed, or under any enactment for which such repealed enactment was substituted, shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act.

Commencement of Act.

39. This Act shall come into operation on the first day of October, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Extent of Act.

Act not to extend to Scotland or Ireland.

40. This Act shall not extend to Scotland or Ireland.

Duration of Act.

41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer.

SCHEDULES.

Section 36.

FIRST SCHEDULE.

ELECTIONS to which this Act Extends.

In England.

Office.	Area.	Officer.	Rate.
Member of local board, as defined by the Public Health Act, 1875	Local Government district or ward of such district.	Clerk to the local board or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district or ward of such district.	Clerk to the Improvement Commissioners, or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the metropolis.	Returning officer of school board.	The school fund.

Sched. 2.

SECOND SCHEDULE.

Enactments Repealed.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As to England.

33 & 34 Vict. c. 75	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50	The Municipal Corporations Act, 1882.	Section seventy-sevenfrom "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election." Section seventy-eight. Section seventy-nine. Section eighty. Section eighty-two. Section eighty-three. Section eighty-four. Section ninety-two,sub-sec.four, from "andthose judges" down to the end of the sub-section. Section ninety-four,sub-sections five, six, seven, and eight. So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

THIRD SCHEDULE.

Part I.

Enactments defining Corrupt Practices.—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102, sections 2 and 3.

2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly:— Bribery defined.

(1) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

Sched. 3.

(2) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3) Every person who shall directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

(1) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 49.

Corrupt payment of rates to be punishable as bribery.

49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punish-

able accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly. Sched. 3.

It is beyond the scope of the present work to enter into a detailed discussion of the law relating to bribery and other corrupt practices. For information on this subject the reader is referred to works on the law of election. One or two recent decisions may, however, be mentioned.

Y. canvassed M., a voter at a municipal election, for his party, and on M. expressing an intention not to vote, told M. he would be remunerated for loss of time. It was held that this was bribery. *Simpson* v. *Yeend*, 33 J. P. 677.

"In order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done corruptly; that it was done thereby to influence their votes, which in my judgment means to induce them to vote for the person on whose behalf the payment was made." Per MARTIN, B., *Cheltenham Election*, 1 O'M. & H. 63. In order to make a third person responsible for the payment of a rate, it must be proved that he gave authority to the person to do the act. The common law rules of agency, therefore, and not those of election law, apply to this case. *Wigan Election*, 1 O'M. & H. 190; *Ward's Practice at Elections*, p. 158.

A single case of bribery avoids an election. *Norwich Election Petition*, 54 L. T. (N.S.) 625.

To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery. *Packard* v. *Collings*, 54 L. T. (N.S.) 619.

Enactment defining the Offence of Personation.

The Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24.

24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name. Personation defined.

H. obtained a voting paper signed by B., who was entitled to vote in an election of councillors, and gave it to F., requesting F. to go with it to the poll and vote for two candidates, and stating that F. would run no risk in doing so. F. went and handed in the paper, but on being questioned admitted that he was not B., and the vote was not received. It was held that H. was properly convicted under 22 Vict. c. 35, s. 9, of inducing F. to personate a voter. It was held further, that it was sufficient for the conviction to state that H. induced F. to personate B., and that it need not set out the details of the process by which F. carried out the personation. *Hague* v. *Brown*, 22 J. P. 231.

If a man applies to the presiding officer for a ballot paper in a name other than his name of origin, or in the name by which he is generally known, but in a name which appears on the register, and which was inserted by the overseers in the belief that it was the name of the applicant, and for the purpose of putting him on the register, he is entitled to vote, and is not a person who "applies for a ballot paper in the name of some other person, whether that name be that of a person living, or dead, or of a fictitious person." *Reg.* v. *Fox*, 16 Cox C. C. 166.

Sched. 3. *Enactments defining the Offences of Treating and Undue Influence.*

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, ss. 1 and 2.

What is treating.

1. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

What is undue influence.

2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector, either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Treating is not the entertainment of equals by equals, but of an inferior by a superior with the object of securing the goodwill of the inferior. *Norwich Election Petition*, 54 L. T. (N.S.) 625.

Giving a school feast was held not to be treating in the *Aylesbury Election Petition*, 4 O'M. & H. 59.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 77.

Definitions.

77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

PART II.

Section 23. *Enactments relating to Disqualification of Electors.*

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, sections 37 & 38.

Prohibition of dis-

37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act or under

the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. Sched. 3. qualified persons from voting. 35 & 36 Vict. c. 60. 45 & 46 Vict. c. 50.

38. (1) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported. Hearing of person before he is reported guilty of corrupt or illgal practice,

* * * * *

(5) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty . . . and incapacity of person reported guilty.

(6) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect :—

(*a*) If it appear to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses:

(*b*) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . . (subject to the provisions of this Act as to a

Sched. 3.

person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses:

(*c*) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * *

FOURTH SCHEDULE.

Form of Declaration by Candidate as to Expenses.

I , having been a candidate at the election of councillor for the borough [or ward] of , on the day of [and my agents] do hereby solemnly and sincerely declare that I have paid for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

(Signature of declarant) *C.D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E.F.*
Justice of the Peace for .

Rule 1.

GENERAL RULES.

The following are the General Rules made pursuant to the Municipal Corporations Act, 1882, section 100, and the Municipal Elections (Corrupt Practices) Act, 1884, section 30, *ante*.

I. The presentation of a Municipal Election Petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt, which may be in the following form :—

Received on the day of at the Master's office a petition touching the election of *A.B.*, alderman, councillor, [&c., *as the case may be*] for the borough of purporting to be signed by [*insert the names of petitioners*].

C.D., Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3), of the Act.

II. A municipal election petition shall contain the following statements :

(1) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

III. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the High Court or a judge thereof.

IV. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, (as the case may be,) and shall be signed by all the petitioners.

V. The following form, or one to the like effect, shall be sufficient :—

In the High Court of Justice,

"The Municipal Corporations Act, 1882."

Election for [*state the place and office for which election held*], holden on the day of A.D.

The petition of *A.* of [*or* of *A.* of , and *B.* of *as the case may be*] whose names are subscribed.

(1) Your petitioner A. is a person who voted [*or* had a right to vote, *as the case may be*,] at the above election, [*or* was a candidate at the above election]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

(2) And your petitioners state that the election was holden on the day of A.D. , when *A.B.*, *C.D.*, and *E.F.* were candidates, and that *A.B.* and *C.D.* have been in the usual manner declared to be duly elected.

Rule 5. (3) And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A.B.* was not duly elected, and that the election was void [*or* that the said *E.F.* was duly elected and ought to have been returned, *or as the case may be*].

(Signed)
A.
B.

VI. Evidence need not be stated in the petition, but the High Court or a judge thereof may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered.

An order for particulars of the corrupt practices alleged in a municipal election petition was made at chambers in the following form :—That the petitioners do within a week deliver to the respondents particulars of all the persons alleged to have been bribed or treated, by whom, and when and where ; and of all the persons alleged to have been retained or employed as canvassers and by whom, and when and where ; and of all persons to whom money was paid or agreed to be paid, on account of the conveyance of voters to the poll, and by whom, and when, and where such moneys were paid or agreed to be paid. On appeal to the court, the order was varied by inserting the words "as far as is known" at the end of each item of the particulars. *Maude* v. *Lowley*, 38 J. P. 280.

Where a judge in chambers ordered a petitioner to furnish particulars of his charges against the respondent ten clear days before the hearing of the petition, the Divisional Court refused to interfere with the order. *Barrow-in-Furness Election Petition*, Times Reports, vol. ii. p. 356. The ordinary time for delivery of particulars is seven days before the trial. *Lenham* v. *Barber*, 48 J. P. 23.

VII. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned ; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

The trial of a municipal election petition was appointed for the 20th January. A list of objections was tendered at the Rule Office of the Common Pleas on the 13th January, and refused on the ground that it was too late, and it was taken away by the person tendering it. On the 14th a list of objections was left at the Rule Office, and one was also delivered to the respondent. It was held that the list was not delivered in due time according to the rule, and that the court had no jurisdiction to order delivery *nunc pro tunc* under the last clause of the rule. *Nield* v. *Batty*, 38 J. P. 264.

VIII. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the

93rd section of the Act, sub-section (10) such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered. Rule 8.

IX. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practise as a solicitor in the High Court of Justice, whom he or they authorise to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to him or them may be left; and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

X. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

XI. The Master shall keep a book or books at his office in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

XII. The Master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed, and also the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general cost of the petition.

XIII. The time for giving notice of the presentation of a petition and of the nature of the proposed security shall be five days, exclusive of the day of presentation.

XIV. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent,

Rule 14. or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

XV. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

XVI. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

XVII. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

XVIII. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a judge thereof.

XIX. Money so deposited shall, if, and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court, or order of a judge thereof.

XX. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court or judge may require.

XXI. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

XXII. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

XXIII. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder. Rule 23.

XXIV. The recognizance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

XXV. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the day of , in the year of our Lord 18 , before me [*name and description*] came *A.B.*, of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or* the following sums], (that is to say) the said *C.D.* the sum of £ , the said *E.F.* the sum of £ , the said *G.H.* the sum of £ , and the said *J.K.* the sum of £ , to be levied on his [*or* their respective] goods and chattels, lands, and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognizance is that if [*here insert the names of all the petitioners, and if more than one, add,* or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners, or any of them] under the Municipal Corporations Act, 1882, to any person or persons, then this recognizance to be void, otherwise to stand in full force.

Signed,

[*Signature of Sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the at , before me,

C.D.

A Justice of the Peace [*or, as the case may be*].

XXVI. The recognizance or recognizances shall be left at the Master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

The security may (unless the High Court or a judge thereof shall otherwise order on summons) be given to any amount not less than 300*l.*; but the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount, not exceeding with the amount for which security shall have been already given, 500*l.* And in default of compliance with such order, no further proceedings shall be had on the petition.

XXVII. The time for giving notice of any objection to a recognizance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the

Rule 27. security, exclusive of the day of service, or in case of further security within five days after service of notice of the nature thereof, exclusive of the day of such service.

XXVIII. An objection to the recognizance must state the ground or grounds thereof, as that the sureties, or any and which of them, are sufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

XXIX. Any objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

XXX. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

XXXI. If an objection be allowed and the security be declared insufficient, the Master or judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

XXXII. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general costs of the petition.

XXXIII. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the High Court of Justice that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows:

In the High Court of Justice.

Municipal Corporations Act, 1882.

I, *A.B.*, of [*as in recognizance*] make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts, of the clear value of £ .

Sworn, *&c.*

XXXIV. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court of Justice.

XXXV. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself, or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the Registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.

XXXVI. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof. Rule 36.

XXXVII. The days mentioned in Rules VII. and VIII., and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered and the day appointed for trial, and exclusively also of Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

XXXVIII. When the last day for presenting petitions, or filing lists of votes or objections, under Rules VII. and VIII., or recognizances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

XXXIX. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

XL. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

XLI. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

XLII. The notice of trial may be in the following form :—

Municipal Corporations Act, 1882.

Election petition of
Borough of

Take notice that the above petition [*or* petitions] will be tried at on the day of and on such other subsequent days as may be needful.

Dated the

Signed, by order,
A.B.,
The Master appointed under the above Act.

Rule 43. XLIII. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

XLIV. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

XLV. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

XLVI. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

XLVII. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the High Court of Justice, or a judge, may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order.

The court or judge may also make such order as to costs as may be just.

XLVIII. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a judge thereof.

XLIX. The title of the court held for the trial of a municipal election petition may be as follows :—

"Court for the trial of a municipal election petition for the borough of [*or as may be*] between petitioner and respondent,"

and it shall be sufficient so to entitle all proceedings in that court.

L. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister ; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

LI. The Commissioner may appoint a proper person to act as crier and officer of the court.

LII. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master shall send a copy of the notice of trial to the said shorthand writer to the House of Commons. Rule 52.

LIII. The amount to be paid to any witness whose expenses shall be allowed by the Commissioner trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the Commissioner.

LIV. The order of the court to compel the attendance of a person as a witness may be in the following form :—

Court for the trial of a municipal election petition for [*complete the title of the court*] the day of

To *A.B.* [*describe the person*]. You are hereby required to attend before the court above at [*place*] on day of at the hour of [*or* forthwith, *as the case may be*], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand, *A.B.*,

The Commissioner to whom the trial of the said petition is assigned.

LV. In the event of its being necessary to commit any person for contempt, the warrant may be as follows :—

At a court holden on at for the trial of a municipal election petition for the borough of before *A.B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Municipal Corporations Act, 1882."

Whereas *C.D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C.D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C.D.* may be found, shall take the said *C.D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C.D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A.B.

Signed the day of

A.B.

LVI. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the person to whom it is directed or any or either of them.

LVII. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have

Rule 57. the same control over the proceedings under the Municipal Corporations Act, 1882, as a judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any judge of the High Court.

LVIII. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

Municipal Corporations Act, 1882.

Borough of Petition of [*state petitioners*]
presented day of

The petitioner proposes to apply to withdraw his petition upon the following ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

LIX. The notice of application for leave to withdraw shall be left at the Master's office.

LX. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall cause the same to be published in the borough to which it relates.

The following may be the form of such notice :—

Municipal Corporations Act, 1882.

In the election petition for in which
is petitioner and
respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the Master's office notice of an application to withdraw the petition, of which notice the following is a copy [*set it out*].

And take notice, that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

LXI. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application if in fact made at the hearing.

LXII. The time and place for hearing the application shall be fixed by a judge, and whether before the High Court, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the court or judge directs.

LXIII. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section (1), of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a judge thereof, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a judge thereof may allow. Rule 63.

LXIV. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

LXV. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

LXVI. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

LXVII. The time for applying to be admitted as a respondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is given as hereinbefore directed, or such further time as the High Court or a judge thereof may allow.

LXVIII. Costs shall be taxed by the Master, or at his request by any Master of the superior court upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of court, judgment, or order of a judge in the ordinary proceedings in the High Court of Justice, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

LXIX. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

LXX. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April, 1883.

C. E. Pollock,
H. Manisty,
Henry C. Lopes,

The Judges for the time being on the rota for the trial of Parliamentary Election Petitions.

THE BALLOT ACT, 1872.

(35 & 36 VICT. CAP. 33.)

An Act to amend the Law relating to Procedure at Parliamentary and Municipal Elections. [18th July, 1872.]

WHEREAS it is expedient to amend the law relating to procedure at parliamentary and municipal elections:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

This Act is applied to municipal elections and therefore to elections of county councillors by the Municipal Corporations Act, 1882, section 58, and Schedule 3, Part III. *ante*. See also the provisions of the Act itself as to its application to municipal elections.

Only those portions of the Act which apply to elections of county councillors are set out in the following pages.

Poll at elections.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and

shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return. Sect. 2.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer.

The concluding paragraph of this section does not apply to elections of county councillors. See the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 1, *ante*.

As to the validity of votes irregularly marked, &c., see the note to rule 36 in the schedule, *post*.

Offences at Elections.

3. Every person who,— Offences in respect of nomination papers, ballot papers, and ballot boxes.

(1) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged;(*a*) or

(2) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

(3) Without due authority supplies any ballot paper to any person; or

(4) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(5) Fraudulently takes out of the polling station any ballot paper; or

(6) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning

Sect. 3. officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

(*a*) This sub-section does not apply to an election of county councillors; the Municipal Corporations Act, 1882, section 74, *ante*, contains the corresponding provision applicable to such an election.

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whomsoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour. Sect. 4.

Every officer, &c., is required by Schedule 1, rule 54, *post*, to make a declaration of secrecy in the form contained in Schedule 2.

An information was laid against the respondent under the above section, charging that he, being a personating agent duly appointed and in attendance at a certain polling station in connection with a municipal election, did not then and there maintain the secrecy of the voting in such station, but did then and there communicate before the poll was closed to a certain person or persons certain information, as to the names and numbers on the register of voters of certain electors who had and had not applied for ballot-papers or voted at that election. It appeared that the respondent having been appointed personating agent, as stated in the information, attended at the polling booth with a copy of the burgess-roll, and remained there some hours, placing a mark against the name of each voter who obtained a ballot paper, and then before the close of the poll left the station, taking with him his copy of the burgess-roll, which he left in the committee-room of the candidate by whom he was employed. There was no proof that the copy of the burgess-roll was seen by any person while in the room.

Held, that there was not sufficient evidence to warrant a conviction under the above section, as there was no proof that the information as to the voters was actually communicated to any person, and it was not enough that the means of acquiring such information were afforded to any one. *Stannanought* v. *Hazeldine*, 4 C. P. D. 191; 48 L. J. M. C. 89; 40 L. T. (N.S.) 589; 27 W. R. 620; 43 J. P. 352.

* * * * *

6. The returning officer at a parliamentary election may use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll as aforesaid. Use of school and public room for poll.

The use of any room in an unoccupied house for the purpose of taking the poll shall not render any person liable to be rated or to pay any rate for such house.

This section does not apply to municipal elections. See the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 1, *ante*. It does, however, apply to elections of county councillors, and the schools and rooms above mentioned may be used at such elections for the purpose of taking the poll and hearing objections to nomination papers, and counting votes. See the Local Government Act, section 75, sub-section (16), *ante*, p. 125.

* * * * *

Duties of Returning and Election Officers.

Sect. 8.

General powers and duties of returning officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

It is the duty of the returning officer at an election of county councillors to provide polling stations, &c., under this section. See the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 3, *ante*. As to the providing of nomination papers, see the same Act, Schedule 3, Part II., rule 6.

The remainder of this section is not applicable to elections of county councillors.

Keeping of order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

A candidate has a general right to be present in a polling station, and he cannot be excluded under this section, though he has not undertaken the duties of an agent, unless he misconducts himself. *Clementson* v. *Mason*, L. R. 10 C. P. 209; 44 L. J. C. P. 171; 32 L. T. (N.S.) 325; 39 J. P. 360.

Powers of presiding officer and administration of oaths, &c.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and

any returning officer may take and receive any declaration authorised by this Act to be taken before him. Sect. 10.

As to the questions which may be put to voters, see the Municipal Corporations Act, 1882, section 59, *ante*.

As to the declaration of secrecy, see Schedule 1, rule 54, *post*.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance, or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds. Liability of officers for misconduct.

Section 50 of the Representation of the People Act, 1867 (which relates to the acting of any returning officer, or his partner or clerk, as agent for a candidate), shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk. 30 & 31 Vict. c. 102

This Act imposes a duty on the presiding officer at a polling station during an election to deliver to the voters voting papers bearing the official mark appointed under the Act for the election, and to be present during such election at the polling station, so that the voters, before depositing their voting papers in the ballot box, can show to him the official mark on the back of such papers, in accordance with the statute. For breach of these duties, being merely ministerial, an action will lie by a party aggrieved, *e.g.*, who has thereby lost the election through votes given to him being void for the official mark, without malice or want of reasonable care on the part of the defendant. If a clerk be appointed by the returning officer to assist at the polling station, the presiding officer may, by the Act, depute to such clerk so much of his duties as he thinks fit, with certain specified exceptions. For the acts of commission or omission of the clerk in the performance of the duties so delegated, the presiding officer will not be responsible, inasmuch as he does not appoint the clerk, and the relation of master and servant does not exist between them. Per BOVILL, C.J., and GROVE, J. :—The Act does not impose on the presiding officer the duty of ascertaining, before the voter deposits a voting paper in the ballot box, whether the official mark is on such paper. Per KEATING and BRETT, JJ. :—The statute does not impose such duty on the presiding officer. *Pickering* v. *James*, L. R. 8 C. P. 489 ; 42 L. J. C. P. 217 ; 29 L. T. (N.S.) 211 ; 21 W. R. 786 ; 37 J. P. 679.

The 30 & 31 Vict. c. 102, s. 50, provides that no returning officer nor his deputy, nor any partner or clerk of either of them, shall act as agent for any candidate in the management and conduct of his election . . . and if he so act he shall be guilty of a misdemeanor.

Miscellaneous.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted. Prohibition of disclosure to vote.

A similar provision is contained in the Municipal Corporations Act, 1882, section 104, *ante*.

Sect. 13. Non-compliance with rules.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

At a municipal election for three councillors six burgesses were nominated and one of them twice. In the ballot paper the name of each burgess nominated was printed, and that of the petitioner, who was twice nominated, was twice printed, his description as given by the nominators somewhat differing, so that there appeared to be seven candidates on the ballot paper in which the petitioner's name appeared, as No. 5 and No. 6, and there was nothing to indicate on the ballot paper that Nos. 5 and 6 were the same person but the similarity of the name. Of the voters who voted for petitioner some put their crosses against both names, Nos. 5 and 6. By adding the numbers together, after rejecting the eight who put their crosses to both Nos. 5 and 6, the petitioner had a majority over the respondent Pulsford, who was declared to be elected :—*Held*, that although the ballot paper was wrong in form, as the petitioner's name ought not to have appeared twice in it, the mistake did not affect the result of the election, and was therefore cured by section 13 of the Ballot Act, 1872 (35 & 36 Vict. c. 33), and that the votes against the petitioner's names, Nos. 5 and 6, might be counted together, there being nothing to prevent it but the irregular form of the ballot paper. *Northcote* v. *Pulsford*, L. R. 10 C. P. 476 ; 44 L. J. C. P. 217 ; 32 L. T. (N.S.) 102 ; 23 W. R. 700 ; 39 J. P. 487.

See also the cases cited in the notes to rule 36 of the 1st Schedule, *post*.

Use of municipal ballot boxes, &c., for parliamentary election and *vice versâ*.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

This section is applied to elections of county councillors by section 75 (19) of the Local Government Act, incorporating 38 & 39 Vict. c. 84, s. 6, *ante*, p. 129. It is there provided that in any case to which the 14th section of the Ballot Act, 1872, is applicable, it shall be the duty of the returning officer, so far as is practicable, to make use of ballot boxes, fittings, and compartments provided for municipal or school board elections, and the court, upon taxation of his accounts, shall have regard to this provision.

Construction of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force, relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments other-

wise relating to the subject-matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall, for the purposes of the said enactments, be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto, shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth," as used in the said enactments, shall be deemed to include a polling station; and the term "proclamation," as used in the said enactments, shall be deemed to include a public notice given in pursuance of this Act. Sect. 15.

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PART III.

Personation.

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections: Definition and punishment of personation.

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years, together with hard labour. It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting,

Sect. 24. counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

If on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in Parliament for such county or borough during the Parliament then in existence.

As to personation at municipal elections and at elections of county councillors, see the Municipal Elections (Corrupt Practices) Act, 1884, section 2, and Schedule 3, Part I., *ante*.

The duty of the returning officer to prosecute is not one which the court can enforce by *mandamus*. *Reg.* v. *Preston* (*Mayor, &c., of*), 46 J. P. 324.

* * * * *

PART IV.

Miscellaneous.

Effect of schedules.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

Definitions. "Municipal borough:"

29. In this Act—

The expression "municipal borough" means any place for the time being subject to the Municipal Corporation Acts, or any of them:

Sect. 29.

The expression "Municipal Corporation Acts" means—

"Municipal Corporation Acts:"

(*a*) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," and the Acts amending the same:

* * * * *

The expression "municipal election" means—

"Municipal election."

(*a*) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough; and

* * * * *

Those portions of the above section which relate to Scotland and Ireland only have been omitted.

The expression "municipal election," as used in this Act, will now include the election of a county councillor.

Application of Act.

30. This Act shall apply to any parliamentary or municipal election which may be held after the passing thereof.

* * * * *

Short title.

33. This Act may be cited as the Ballot Act, 1872, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine; and on the said day the Acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.

The Ballot Act is continued in force from year to year, and is now in force by virtue of the Expiring Laws Continuance Act, 1888.

SCHEDULES.

Sched. 1. Rules.

FIRST SCHEDULE.

Part I.

Rules for Parliamentary Elections.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough.

At an election of county councillors this duty will devolve on the returning officer. See the Local Government Act, 1888, section 75, sub-section (4), *ante*, p. 121, and the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 3, *ante*.

Rule 16 does not apply to municipal elections or elections of county councillors. See the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 1, *ante*.

* * * * * *

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

As to the duty of the returning officer to give notice of the description of persons entitled to vote at each polling station, see the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 2.

As to the duty of the returning officer at the first election of county councillors, see the Local Government Act, 1888, section 103, sub-section (1), *ante*, p. 161.

Rule 19 does not apply to municipal elections or to elections of county councillors. See the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 1, *ante*.

* * * * * *

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

As to the duty of the returning officer at an election of county councillors to provide the things mentioned in the above rule, see the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 1, *ante*.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his

station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty. Sched. 1. RULES.

The candidates cannot be excluded. See *Clementson* v. *Mason*, cited in the note to section 9, *ante*.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the Second Schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

See the form in the Second Schedule, *post*.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

A ballot paper not marked with the official mark is void. See rule 36, *post*.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of voters marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling,

Sched. 1. RULES. before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

The form of declaration of inability to read is contained in the second schedule, *post*.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

28. A voter who has inadvertently dealt with this ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1) Each ballot box in use at his station, unopened but with the key attached ; and

(2) The unused and spoilt ballot papers, placed together ; and

(3) The tendered ballot papers ; and

(4) The marked copies of the register of voters, and the counterfoils of the ballot papers ; and

(5) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read ;

and shall deliver such packets to the returning officer.

It would appear that the marked copies of the register and the counterfoils should be sealed up separately. See per BRETT, J., in *Stowe* v. *Joliffe*, L. R. 9 C. P. 446 ; 43 L. J. C. P. 173 ; 30 L. T. (N.S.) 299 ; 22 W. R. 946 ; 38 J. P. 617.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

As to the appointment of agents at a municipal election or an election of county councillors, see the Municipal Corporations Act, 1882, section 58 (6), *ante*.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

The non-attendance of the agents will not invalidate the county.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

The candidates are entitled to be present. See *Clementson* v. *Mason*, cited in the note to section 9.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the number printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the Clerk of the Crown in Chancery the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark;
2. Voting for more candidates than entitled to;
3. Writing or mark by which voter could be identified;
4. Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates, before such report is sent, to copy it.

The decision of the returning officer as to any question arising in respect of any ballot paper is final, subject to reversal on petition questioning the election on return. See section 2, *ante*.

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To render an election void under the Ballot Act by reason of a non-observance of, or non-compliance with, the rules or forms given therein, such non-observance or non-compliance must be so great as to satisfy the tribunal before which the validity of the election is contested that the election has been conducted in a manner contrary to the principle of an election by ballot, and that the irregularities complained of did affect or might have affected the result of the election. The ballot paper must not be marked so as to show that the voter intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all, or for which candidate he intended to vote, nor so as to make it possible by seeing the paper itself or by reference to other available facts to identify the way in which he has voted. If these requirements are not substantially fulfilled the ballot paper is void, and should not be counted, and if it is counted it should be struck out on a scrutiny. Ballot papers with the name of the voter or of the candidate voted for written opposite to the name of the latter and not marked with a cross, or with the addition of a "*cu*" to the cross, were held to be void. But the placing of two crosses, or three crosses, or a single stroke in lieu of a cross, or a straight line, or a mark like an imperfect letter P in addition to the cross, or a star instead of a cross, or a cross blurred or marked with a tremulous hand, or a cross placed on the left-hand side of the ballot paper, or a pencil line drawn through the name of the candidate not voted for, or a ballot paper torn longitudinally through the centre, were held not to avoid the vote in the absence of evidence of connivance or pre-arrangement. Twenty ballot papers were marked by the presiding officer by the direction of voters who were unable to read. Each of these ballot papers was placed by the presiding officer in the ballot box wrapped up in the declaration of inability to read made by the voter. The declarations of inability to read of the votes so marked by the presiding officer were not made up into a separate packet and sealed as required by rules 26, 29, *ante*, but were delivered to the returning officer in the ballot box with the ballot papers as above mentioned. These votes could have been, but were not, in fact, identified by the returning officer at the counting of the votes. It was held that, notwithstanding this breach by the presiding officer of the directions in the rules, the votes in question were properly counted. At one of the polling stations the presiding officer before delivering the ballot papers to the electors attending to vote, marked upon each (to the extent of 294) the number of the voter appearing on the burgess roll, which would enable any of the persons present to identify the way in which the party had voted. Of the electors who received these ballot papers, 234 voted for the petitioner and 60 for the respondent. These votes were not counted by the returning officer. It was held that this admitted error of the presiding officer, which did not affect the result, did not render the election void either at common law or under the Ballot Act. Where there have been irregularities in the conduct of an election by the presiding officer at a particular polling station, but there has been no personal default on the part of the returning officer, and the result of the election has not been affected by the mistake of the presiding officer, the returning officer will not be visited with costs. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 44 L. J. C. P. 293; 32 L. T. (N.S.) 867; 39 J. P. 776.

In another case, where the presiding officer marked the number of the elector in the register of electors on about one-third of the total number of ballot papers issued, as well as on the counterfoils, but the result of the election was not affected by the irregularity, it was held that the election was not void under the statute nor at common law. *Deans* v. *Haddington Magistrates*, 9 Ct. of Sess. Cas. 1077.

In the *Wigtown Case*, 2 O'M. & H. 223, papers were rejected because of a name or initials written thereon, and it was held that when a name was found written on a paper it was immaterial whether it was the name of the voter on the register or not. It was further held that a paper was not to be rejected because it was marked with ink instead of with pencil, unless the ink were peculiar.

Where the cross was partly in the space opposite one candidate's name and partly in that opposite another's, the vote was held good for the candidate opposite whose name the two limbs of the cross intersected. *M'Laren* v. *Milne Home*, 7 Q. B. D. 477. In the same case it was held that though the mark did not discolour the ballot paper, it might be well marked, as if done by a thumb-nail or blunt instrument.

A ballot paper which conforms in other respects to the requirements of the Act is not void because it has not on its face the official mark directed by section 2 to be marked on both sides. *Ackers* v. *Howard*, 16 Q. B. D. 739; 55 L. J. Q. B. 273; 54 L. T. (N.S.) 651; 34 W. R. 609; 50 J. P. 519.

The Ballot Act, 1872, sched. 2, which applies to municipal elections, directs that a voter shall vote by placing a cross on the right-hand side of the ballot paper opposite the name of each candidate for whom he votes. A General Order of the Education Department, made under the Elementary Education Acts, provided that the poll at elections of school boards in boroughs shall be conducted in like manner as the poll at a contested municipal election is directed by the Ballot Act, 1872, to be conducted, and the provisions of that Act shall, subject to the provisions of this Order, apply to the elections of school boards, provided that "every voter shall be entitled to a number of votes equal to the number of the members of the school board to be elected, and may give all such votes to one candidate or may distribute among the candidates as he thinks fit. The voter may place against the name of any candidate for whom he votes the number of votes he gives to such candidate in lieu of a cross, and the form of directions for the guidance of the voter in voting contained in the Ballot Act, 1872, shall be altered accordingly:—*Held*, applying the principle of *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 44 L. J. C. P. 293, that the provisions of the General Order and of the Ballot Act, 1872, were sufficiently complied with where ballot papers at the election of a school board in a borough were marked otherwise than in the mode prescribed by the Order if it could be ascertained with reasonable certainty for whom the voter in each case intended to vote, and how many votes he intended to give, and if it appeared that he had not intended to give a greater number of votes than there were members of the school board to be elected. Applying the above principles, the court held that ballot papers marked by placing crosses instead of figures, or crosses and figures, or single strokes, opposite the names of candidates, were valid. *Phillips* v. *Goff*, 17 Q. B. D. 805; 55 L. J. Q. B. 512; 35 W. R. 197; 50 J. P. 614.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall re-seal each sealed packet after examination. The returning officer shall report to the Clerk of the Crown in Chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it.

In the case of a municipal election or an election of county councillors, no return is to be made to the Clerk of the Crown in Chancery. See the Municipal Corporations Act, 1882, Schedule 3, Part III., rule 6, *ante*.

38. Lastly, the returning officer shall forward to the Clerk of the Crown in Chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his

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possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

In municipal elections the packets, &c., are to be forwarded to the town clerk. See rule 64, *post*. In an election of county councillors they will be forwarded to the clerk of the council. See the Local Government Act, section 75, sub-section (5), *ante*, p. 122.

39. The Clerk of the Crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or one of Her Majesty's Superior Courts, shall cause them to be destroyed.

In a municipal election the documents will be retained by the town clerk and destroyed by him, subject to the directions of the borough council. In an election of county councillors the clerk of the council will perform the like duties. See the note to the preceding rule.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the Clerk of the Crown in Chancery, except under the order of the House of Commons or under the order of one of Her Majesty's Superior Courts, to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons, time, place, and mode of inspection or production as the house or court making the same may think expedient, and shall be obeyed by the Clerk of the Crown in Chancery. Any power given to a court by this rule may be exercised by any judge of such court at chambers.

In the case of a municipal election, or an election of county councillors, the order for inspection will be made by the county court. See rule 64, *post*.

A prosecution having been instituted against a deputy-returning officer, who had presided at a booth during a municipal election, for offences under the Ballot Act, 1872 (35 & 36 Vict. c. 33), a county court judge, in the exercise of jurisdiction given by Schedule 1, Part II., rule 64 of the Act, made an order directing the town clerk of the borough to produce and show, for the purpose of the prosecution, certain rejected ballot papers, counterfoils, counted ballot papers, and spoilt ballot papers relating to the same polling station, and to open the sealed packets containing those documents, and the marked copy of the register, and to take all such proper means as he should deem necessary in order that the mode in which any particular elector had voted should not be discovered; and further ordered that no person should be allowed to see the face of the counted ballot papers. At the trial of the indictment against the prisoner, charging him with having fraudulently placed papers purporting to be, but to his knowledge not being ballot papers in the ballot box, BLACKBURN, J., allowed the counterfoils and marked register produced under the

aforesaid order to be given in evidence, and the face of the voting papers to be inspected so as to show how the votes appeared to have been given. *Held*, that this was rightly done. *Reg.* v. *Beardsall*, 1 Q. B. D. 452 ; 45 L. J. M. C. 157 ; 34 L. T. (N.S.) 660 ; 40 J. P. 583.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the Clerk of the Crown in Chancery ; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the house or tribunal making the order may think expedient ; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

In the case of municipal elections, or elections of county councillors, an order may be made under this rule by the county court. See rule 64, *post*.

42. All documents forwarded by a returning officer in pursuance of this Act to the Clerk of the Crown in Chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery, with the consent of the Speaker of the House of Commons, and the Clerk of the Crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

In the case of a municipal election, or an election of county councillors, the regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied are to be prescribed by the borough council (or county council as the case may be), with the consent of a Secretary of State. See rule 64, *post*.

Leave to inspect the marked register of voters, returned by the presiding officer to the Clerk of the Crown in Chancery under the Ballot Act, 1872, will be granted where the petition against the return of a candidate at a parliamentary election charges bribery and treating, although it does not pray a scrutiny. *James* v. *Henderson*, 43 L. J. C. P. 238 ; 30 L. T. (N.S.) 527 ; 38 J. P. 663.

43. Where an order is made for the production by the Clerk of the Crown in Chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such Clerk of the Crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the

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register of voters at such election the same number as the number written on such counterfoil.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

By stating at the close of the poll the number of votes given to each candidate at a municipal election, the returning officer makes a sufficient declaration under section 2 of this Act, and the effect of that declaration is not altered by reason of a public notice given on the following day under this rule and the next. *Reg.* v. *Bangor* (*Mayor, &c., of*), 18 Q. B. D. 349; 56 L. J. Q. B. 326; 56 L. T. (N.S.) 434; 35 W. R. 158; 51 J. P. 51.

At the first election of county councillors, the returning officer is to send notice of the persons elected to the clerk of the peace and to each person elected. Local Government Act, section 103, sub-section (5), *ante*, p. 162.

46. Where the returning officer is required or authorised by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

But though a candidate does not himself undertake the duties of an agent, and does not assist his agent, he is nevertheless entitled to be present at polling stations. *Clementson* v. *Mason*, cited in the notes to section 9, *ante*.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice

required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

As to agents at municipal elections and elections of county councillors, see the Municipal Corporations Act, 1882, section 58, sub-section (6), *ante*.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the votes dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

As to the penalties for infringement of secrecy, see section 4.
As to the form of the declaration, see Schedule 2, *post*.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above mentioned.

57. In this Act—

* * * * * *

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

As to agents at a municipal election or an election of county councillors, see the Municipal Corporations Act, 1882, section 58, sub-section (6), *ante*.

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PART II.

Rules for Municipal Elections.

64. In the application of the provisions of this schedule to municipal elections the following modifications shall be made:—

(*a*) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(*b*) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the Clerk of the Crown in Chancery shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

(*a*) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons, or of one of Her Majesty's Superior Courts; but an appeal from such county court may be had in like manner as in other cases in such county court;

(*b*) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's Principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(*c*) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

Municipal election includes an election of county councillors. Register of voters at the latter election will mean the division register, *i.e.*, that part of the roll of county electors which relates to the electoral division.

The other modifications above mentioned have been noticed in the notes to the several rules.

SECOND SCHEDULE.

Sched. 2. FORMS.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Form of Ballot Paper.

Form of Front of Ballot Paper.

Counterfoil No.			
	1	**BROWN** (John Brown, of 52, George St., Bristol, Merchant.)	
	2	**JONES** (William David Jones, of High Elms, Wilts, Esq.)	
	3	**MERTON** (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
	4	**SMITH** (Henry Sydney Smith, of 72, High Street, Bath, Attorney.)	

NOTE: *The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*

Form of Back of Ballot Paper.

No.

Election for county [*or* borough, *or* ward].

18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to Printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

Sched. 2. FORMS. *Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.*

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare, That I will not at this election for do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Form of Declaration of Inability to Read.

I, *A.B.*, of , being numbered on the Register of Voters for the county [*or* borough] of , do hereby declare that I am unable to read.

A.B., his mark.

day of .

I, the undersigned, being the presiding officer for the polling station for the county [*or* borough] of , do hereby certify, that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
Presiding officer for polling station for the county [*or* borough] of .

day of .

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